CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1929~~ 1930

No. ~~632~~ 472

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BOSTON BUICK COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 5, 1930
CERTIORARI GRANTED MARCH 17, 1930

(34763)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 632

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BOSTON BUICK COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

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1 [Caption omitted.]

In United States District Court, District of Massachusetts

No. 3104, law docket

BOSTON BUICK COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

Petition

Filed August 8, 1927

1. The petitioner is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its usual office and place of business at Boston in said Commonwealth and within this district. The petitioner was formerly named Buick Boston Company and by amendment to its charter in 1919 its name was changed to Boston Buick Company.

2 2. The amount claimed in this petition does not exceed ten thousand dollars.

3. The accounting period of the petitioner is and was during the years hereinafter referred to a fiscal year ending July 31. On or about January 6, 1919, in accordance with extensions of time for filing returns granted by the Commissioner of Internal Revenue, the petitioner duly made to the collector of internal revenue at said Boston a tentative return of its income for the fiscal year ended July 31, 1918, under the provisions of the revenue act of 1917, and within 3 the time allowed by said extensions, to wit, on or about June 14, 1919, made a final return of its income for said period to said collector under the provisions of the revenue act of 1917 and the revenue act of 1918.

4. Upon its said returns the petitioner was originally assessed income and profits taxes amounting to $109,005.85, and an additional assessment was later made, to wit, on or about August 18, 1921, in the sum of $1,421.19, making a total assessment for said period of $110,427.04. The amount of said assessment was paid by the petitioner to the said collector of internal revenue on the following dates:

January 6, 1919	$80,000.00
January 8, 1919	17,584.56
March 17, 1919	6,263.41
September 12, 1919	2,302.56
December 9, 1919	2,855.32
August 19, 1921	1,421.19
Total	$110,427.04

5. On or about December 17, 1923, the petitioner made application to the Commissioner of Internal Revenue for special assessment of its excess-profits tax for said period under the provisions of
3 section 210 of the revenue act of 1917, and section 328 of the revenue act of 1918. On February 19, 1924, the petitioner duly filed a claim for refund of the taxes paid for said period in the sum of $82,233.56 upon the ground that it was entitled to special assessment under the sections above referred to. On or about February 26, 1924, the petitioner was notified by the Commissioner of Internal Revenue that its application for special assessment had been allowed and that the correct tax liability of the petitioner for said period was $87,245.96, resulting in an overassessment of $23,181.08, and that the amount of said overassessment would be made the subject of a certificate of overassessment to be forwarded through the office of the collector of internal revenue at Boston, and to be applied by him in accordance with section 252 of the revenue act of 1921.

6. The petitioner is informed and believes and therefore avers that the overassessment referred to in the foregoing paragraph was listed by the Commissioner of Internal Revenue upon a schedule of overassessments under date of March 14, 1924, and on said date was forwarded by him to the collector of internal revenue at Boston for the purpose of having the same checked against the books and records in the office of said collector and to be thereafter returned to the commissioner for final allowance; that said schedule of overassessments was thereafter checked by the said collector and returned by him to the Commissioner of Internal Revenue on or about July 11, 1924, and that said overassessment was thereafter finally allowed.

7. The petitioner on April 15, 1924, duly filed with the Commissioner of Internal Revenue a claim for credit in the sum of $15,903.99 against an installment of the tax due from the petitioner on that date for its fiscal year ended July 31, 1923, and on July 3, 1924, filed a further claim for credit in the sum of $7,277.09 against an
4 installment of the tax due from the petitioner on July 15, 1924, for its fiscal year ended July 31, 1923, both of which claims have been allowed.

8. The petitioner is ignorant as to the exact date of the allowance of said claims, but is informed and believes and therefore avers that its said claims for credit were not allowed until after July 11, 1924, and that interest upon the amount of said credits should be allowed and paid to it upon the basis and in the manner provided in said section 1019 of the revenue act of 1924.

9. No interest was allowed or paid upon the amount of said credits until February 1, 1926, upon which date the Commissioner of Internal Revenue allowed interest in the amount of $219.02, which was computed at one-half of one per cent per annum on the sum of $1,421.19, the amount of the additional assessment, from August 18, 1921, the date when the additional assessment was paid, to March 14, 1924, under the claim by the said commissioner that interest upon

said overassessment was governed by section 1324–a of the revenue act of 1921.

10. The petitioner says that it has not been allowed and paid the amount of interest to which it is entitled upon said credits in that it is entitled to interest upon the amount of said credits at the rate of 6 per cent per annum from the date the tax was paid to the due dates of the amounts against which its said credits were taken as provided in section 1019 of the revenue act of 1924, and that the said commissioner has erred in the allowance of interest under the provisions of section 1324–a of the revenue act of 1921.

11. Wherefore your petitioner prays that this honorable court adjudge that the defendant owes it interest upon the sums of $15,903.99 and $7,277.09 from the dates said amounts were paid to April 15, 1924, and July 15, 1924, respectively, at the rate of six per cent per annum, less the amount of $219.02 heretofore allowed and paid.

[SEAL.]

BOSTON BUICK COMPANY,
By DANIEL E. AMES,
Treasurer.

5 [*Duly sworn to by D. E. Ames; jurat omitted in printing.*]

In United States District Court

Order overruling demurrer

This cause was thence continued to the September term, A. D. 1927, when, to wit, September 21, 1927, a demurrer was filed by consent.

Said cause was thence continued to the December term, A. D. 1927, when, to wit, January 17, 1928, said cause was set down for hearing on demurrer, the Honorable Elisha H. Brewster, district judge, sitting, and it was ordered by the court that said demurrer be overruled.

In United States District Court

Answer

Filed January 19, 1928

Now comes the defendant in the above-entitled action and for its answer denies each and every item, allegation, count, and particular in said petition contained.

By its attorneys,

FREDERICK H. TARR,
United States Attorney,
By J. M. LEINENKUGEL,
Special Assistant to the U. S. Attorney.

6 In United States District Court

Agreed statement of facts

Filed March 14, 1928

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys that the following facts may be taken as true, provided, however, that this stipulation shall not affect the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true.

1. The petitioner is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its usual office and place of business at Boston, in said Commonwealth and within this district. The petitioner was formerly named Buick Boston Company, but by amendment to its charter in 1919 its name was changed to Boston Buick Company.

2. The amount claimed in this petition does not exceed ten thousand dollars.

3. The accounting period of the petitioner is and was during the years hereinafter referred to a fiscal year ending July 31. On or about January 6, 1919, in accordance with extensions of time for filing returns granted by the Commissioner of Internal Revenue, the petitioner duly made to the collector of internal revenue at said Boston a tentative return of its income for the fiscal year ended July 31, 1918, under the provisions of the revenue act of 1917 and within the time allowed by said extensions, to wit, on or about June 14, 1919, made a final return of its income for said period to said collector under the provisions of the revenue act of 1917 and the revenue act of 1918.

4. Upon its said returns the petitioner was originally as-
7 sessed income and profits taxes amounting to $109,005.85, and an additional assessment was later made, to wit, on or about August 18, 1921, in the sum of $1,421.19, making a total assessment for said period of $110,427.04. The amount of said assessment was paid by the petitioner to the said collector of internal revenue on the following dates:

January 6, 1919	$80,000.00
January 8, 1919	17,584.56
March 17, 1919	6,263.41
September 12, 1919	2,302.56
December 9, 1919	2,855.32
August 19, 1921	1,421.19
Total	$110,427.04

5. On or about December 17, 1923, the petitioner made application to the Commissioner of Internal Revenue for special assessment of its excess profits tax for said period under the provisions of section 210 of the revenue act of 1917 and section 328 of the revenue act of 1918. On February 19, 1924, the petitioner duly filed a claim for

refund of the taxes paid for said period in the sum of $82,233.56 upon the ground that it was entitled to special assessment under the sections above referred to. On or about February 26, 1924, the petitioner was notified by the Commissioner of Internal Revenue that its application for special assessment had been allowed and that the correct tax liability of the petition for said period was $87,245.96, resulting in an overassessment of $23,181.08, and that the amount of said overassessment would be made the subject of a certificate of overassessment to be forwarded through the office of the collector of internal revenue at Boston, and to be applied by him in accordance with section 252 of the revenue act of 1921.

6. The overassessment referred to in the foregoing paragraph was listed by the Commissioner of Internal Revenue upon a
8 schedule of overassessments under date of March 14, 1924, and forwarded by him to the collector of internal revenue at Boston, a copy of which schedule, including the certificate of deputy commissioner, authorization of commissioner, and certificate of collector, appearing thereon, is annexed hereto and made a part hereof, being marked "A." The collector, under date of July 11, 1924, acted upon said schedule, made the entries shown on said schedule in the columns headed "Entries to be made by the collector," certified thereto as set forth in "Certificate of collector," and returned the same to the commissioner, together with a schedule of refunds and credits, a copy of which, including the certificate of collector, certificate of deputy commissioner, and authorization of commissioner, appearing thereon, is annexed hereto and made a part hereof, being marked "B."

7. The petitioner on April 15, 1924, duly filed with the Commissioner of Internal Revenue a claim for overpayment for the fiscal year 1918 of $23,101.08 asking for a credit in the sum of $15,903.99 against an installment of income tax due from the petitioner on that date for its fiscal year ended 1923 and a refund of the sum of $7,277.09, and thereafter, on July 3, 1924, filed a further claim asking that the amount of $7,277.09 theretofore claimed as a refund be applied as a credit against an installment of income tax due from the petitioner on July 15, 1924, for its fiscal year ended 1923.

8. Said overassessment was applied by the collector as follows: On July 11, 1924, there was entered upon the books of the collector against outstanding taxes due from the petitioner on October 15, 1919, for the fiscal year ended 1919 a credit of $7,277.09, and in addition thereto a credit of $15,903.99 against an installment of income tax due from the petitioner on April 15, 1924, for the fiscal year ended 1923. Thereafter, on November 11, 1924, said credit of $7,277.09 was applied by the collector against an installment of income tax due from the petitioner on July 15, 1924, for the
9 fiscal year ended 1923, and taken away from the petitioner's account for fiscal year 1919.

TREASURY DEPARTMENT
U. S. Internal Revenue Service
Form 7805
Form approved by Comptroller General
Feb. 5, 1923

[Copy]

Ex "A"

Schedule No. IT-A-9272.
Sheet 1 of ——— sheets.

District of Massachusetts.

SCHEDULE OF OVERASSESSMENTS AND ALLOWANCE OF ABATEMENTS, CREDITS, REFUNDS, AND RELATED CLAIMS, IF ANY

INCOME TAX UNIT

Certificate of deputy commissioner

Commissioner of Internal Revenue:

The returns of the taxpayers listed herein, together with their claims (if any) and appropriate supporting evidence, have been carefully examined and the tax liability of the respective taxpayers has been determined in accordance with the available facts and the law. The overassessments or reductions in tax liability appearing in column 4 are accordingly recommended for allowance.

Date March 14, 1924.

J. G. BRIGHT, *Deputy Commissioner.*

Authorization of commissioner

To the Collector ——— District of Massachusetts:

The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the "Certificates of Overassessment" or "Notices of Adjustment of Claim for Abatement" attached thereto.

You will immediately check such items against the accounts of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated, in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts. (This applies only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary schedule of refunds and credits (Form 7805–A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805–A) referred to above, and an appropriate memorandum made upon the taxpayer's account.

You will thereupon complete and certify this schedule and the schedule upon Form 7805–A, and return the necessary copies of each to the Commissioner of Internal Revenue.

(Signed) D. H. BLAIR,
Commissioner of Internal Revenue.

Date March 14, 1924.

Certificate of collector

To the Commissioner of Internal Revenue:

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date July 11, 1924.

(Signed) MALCOLM E. NICHOLS,
Collector ——— District of Massachusetts.

Item No.	Certificate of overassessment or claim number	Name of taxpayer	Overassessments or reductions of tax liability (amount)	List, page and line, or account number	Taxable year	(Entries to be made by the collector) Abatement (amount)	Overpayment (account)	Credit (amount carried to Form 7805-A)	Account credited, list, page, and line	Due date of items against which credit was made	Net amount refundable carried to Form 7805-A	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
X	X X	Totals of ——— items in this schedule		X X X	X				X X X	X X		X X
...	X X	X X X	X X	...	X X	X X	X X	X X	X X	X X	X X	X X
11	651133	Buick Boston Co	23,181.08	...	July 31, 1918	...	23,181.08	7,277.09 15,903.99	Oct. 19-Oct. 4, 1106, 10-15-19. 1-15-19. Jan. 24, 400809, 3-31-24. 4-15-19. 4-15-19.	...	...	O. A.
...	X X	X X X	X X	...	X X	X X	X X	X X	X X	X X	X X	X X
X	X X	Page totals only	...	X X X	X	...	...	...	X X X	X X	...	X X

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82 TREASURY DEPARTMENT
U. S. Internal Revenue Service
Form 780–A
Form approved by Comptroller General
Feb. 5, 1923

[Copy]

Ex. "B"

Schedule No. IT–R–9272
Sheet 1 of ——— sheets.
Dist. of Mass.

SCHEDULE OF REFUNDS AND CREDITS—ILLEGAL OR ERRONEOUS COLLECTIONS

INCOME TAX UNIT

Certificate of Collector

To the Commissioner of Internal Revenue:

The items hereon are relisted as they appeared for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit.

Date July 11, 1924.

(Signed) MALCOLM E. NICHOLS,
Collector. ——— *District of Mass.*

Certificate of Deputy Commissioner

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due.

Date July 31, 1924.

———,
Deputy Commissioner.

Authorization of Commissioner

To the Disbursing Clerk, Treasury Department.

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due. Payment may, therefore, be made in the amounts shown in column 7.

Date July 31, 1924.

———,
Commissioner of Internal Revenue.

Item No.	Certificate of overassessment or claim number	Name and address of taxpayer	Not amount refundable	Amount credited	(Not to be used by collector) Interest accrued	(Not to be used by collector) Total refundable	Date of final payments of accounts from which credits were transferred and overpayments found	(Not to be used by collector) Refunding taxes illegally collected 1924 and prior years	19	19	Paid by disbursing clerk, Treasury Department, by checks, dated 19 , numbered as follows:	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
X	X X X	Totals of ——— items in this schedule					X X					
	X X X	X X X	X X	X X	X X	X X	X X	X X			X X	X X
11	651133	Buick Boston Co		23,181.08			8-18-21					
	X X X	X X X	X X	X X	X X	X X	X X	X X				
		X X X										
		Page totals only					X X				X X	X X

9. The petitioner seasonably made application for interest upon the credits allowed as above set forth. On February 1, 1926, the commissioner allowed interest thereon in the amount of $219.02 computed at one-half of one per cent per month on $1,421.19, the amount of the additional tax from August 18, 1921, to March 14, 1924, covering a period from the date of payment of said additional tax to the date upon which the commissioner claimed the credit was allowed as provided by section 1324 of the revenue act of 1921. The petitioner thereupon protested to the commissioner against the allowance of interest under the revenue act of 1921 and claimed that it was entitled to interest upon said credits as provided by section 1019 of the revenue act of 1924, which claim the commissioner has denied.

10. All claims by the petitioner were duly filed and all conditions precedent to the bringing of this action have been complied with.

CHARLES W. MULCAHY,
Attorney for Petitioner.
FREDERICK H. TARR,
United States Attorney.
By J. M. LEINENKUGEL,
Special Asst. to the U. S. Attorney.
Attorneys for Respondent.

10 In United States District Court

Minute entry of hearing

On the said 14th day of March said cause came on to be heard on the aforementioned agreed statement of facts.

Said cause was thence taken under advisement from term to term to the June term, A. D. 1928, when, to wit, July 5, 1928, an opinion of the court was announced, finding that plaintiff was entitled to interest.

At the same term, to wit, July 25, 1928, a draft bill of exceptions was filed by the defendant.

This cause was then continued to the present September term, A. D. 1928, when, to wit, November 5, 1928, a substituted bill of exceptions is filed and allowed.

In United States District Court

Agreement for judgment

Filed November 28, 1928

It is hereby agreed that judgment may be entered for the plaintiff in the sum of $6,675.83 with costs.

CHARLES W. MULCAHY,
Attorney for Plaintiff.
FREDERICK H. TARR,
United States Attorney,
By J. DUKE SMITH,
Special Asst. to the U. S. Attorney,
Attorneys for Defendant.

In United States District Court

Judgment

Thereupon, to wit, November 28, 1928, it is considered by the court, the Honorable Elisha H. Brewster, district judge, sitting, that the said Boston Buick Company, plaintiff, recover of the said United States, defendant, the sum of six thousand six hundred seventy-five dollars and eighty-three cents ($6,675.83) damages, and its costs of suit taxed at . . .

In United States District Court

Defendant's substitute bill of exceptions

Filed and allowed November 5, 1928

11 This is a petition against the United States to recover interest on an overassessment of income and profits taxes for the fiscal year 1918, and applied as a credit against outstanding taxes for other years. The pleadings are part of this record and may be referred to as part of this bill of exceptions. The case was tried before Brewster, J., without a jury upon an agreed statement of facts. The following are all the material facts in the case.

The petitioner is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its usual office and place of business at Boston, in said Commonwealth and within this district. The petitioner was formerly named Buick Boston Company, but by amendment to its charter in 1919 its name was changed to Boston Buick Company.

The amount claimed in this petition does not exceed ten thousand dollars.

The accounting period of the petitioner is and was during the years hereinafter referred to a fiscal year ending July 31. On or

about January 6, 1919, in accordance with extensions of time for filing returns granted by the Commissioner of Internal Revenue, the petitioner duly made to the collector of internal revenue at said Boston a tentative return of its income for the fiscal year ended July 31, 1918, under the provisions of the revenue act of 1917, and within the time allowed by said extensions, to wit, on or about June 14, 1919, made a final return of its income for said period to said collector under the provisions of the revenue act of 1917 and the revenue act of 1918.

Upon its said returns the petitioner was originally assessed income and profits taxes amounting to $109,005.85, and an additional assessment was later made, to wit, on or about August 18, 1921, in the sum of $1,421.19, making a total assessment for said period of $110,427.04. The amount of said assessment was paid by the petitioner to the said collector of internal revenue on the following dates:

12	January 6, 1919	$80,000.00
	January 8, 1919	17,584.56
	March 17, 1919	6,263.41
	September 12, 1919	2,302.56
	December 9, 1919	2,855.32
	August 19, 1921	1,421.19
	Total	110,427.04

On or about December 17, 1923, the petitioner made application to the Commissioner of Internal Revenue for special assessment of its excess profits tax for said period under the provisions of section 210 of the revenue act of 1917 and section 328 of the revenue act of 1918. On February 19, 1924, the petitioner filed a claim for refund of the taxes paid for said period in the sum of $82,233.56 upon the ground that it was entitled to special assessment under the sections above referred to. On or about February 26, 1924, the petitioner was notified by the Commissioner of Internal Revenue that its application for special assessment had been allowed and that the correct tax liability of the petitioner for said period was $87,245.96, resulting in an overassessment of $23,181.08, and that the amount of said overassessment would be made the subject of a certificate of overassessment to be forwarded through the office of the collector of internal revenue at Boston and to be applied by him in accordance with section 252 of the revenue act of 1921.

The overassessment referred to in the foregoing paragraph was listed by the Commissioner of Internal Revenue upon a schedule of overassessments, under date of March 14, 1924, and forwarded by him to the collector of internal revenue at Boston, a copy of which schedule, including the certificate of deputy commissioner, authorization of commissioner, and certificate of collector appearing thereon is annexed hereto and made a part hereof, being marked "A."

13 The collector, under date of July 11, 1924, acted upon said schedule, made the entries shown on said schedule in the columns headed "Entries to be made by the collector," certified thereto as set forth in "certificate of collector," and returned the same to the

commissioner, together with a schedule of refunds and credits, a copy of which, including the certificate of collector, certificate of deputy commissioner, and authorization of commissioner appearing thereon is annexed hereto and made a part hereof, being marked "B."

The petitioner on April 15, 1924, duly filed with the Commissioner of Internal Revenue a claim for overpayment for the fiscal year 1918 of $23,101.08, asking for a credit in the sum of $15,903.99 against an installment of income tax due from the petitioner on that date for its fiscal year ended 1923 and a refund of the sum of $7,277.09, and thereafter on July 3, 1924, filed a further claim asking that the amount of $7,277.09 theretofore claimed as a refund be applied as a credit against an installment of income tax due from the petitioner on July 15, 1924, for its fiscal year ended 1923.

Said overassessment was applied by the collector as follows: On July 11, 1924, there was entered upon the books of the collector against outstanding taxes due from the petitioner on October 15, 1919, for the fiscal year ended 1919, a credit of $7,277.09, and in addition thereto a credit of $15,903.99 against an installment of income tax due from the petitioner on April 15, 1924, for the fiscal year ended 1923. Thereafter, on November 11, 1924, said credit of $7,277.09 was applied by the collector against an installment of income tax due from the petitioner on July 15, 1924, for the fiscal year ended 1923, and taken away from the petitioner's account for fiscal year 1919.

The petitioner seasonably made application for interest upon the credits allowed as above set forth. On February 1, 1926, the commissioner allowed interest thereon in the amount of $219.02
14 computed at one-half of one per cent per month on $1,421.19, the amount of the additional tax from August 18, 1921, to March 14, 1924, covering a period from the date of payment of said additional tax to the date upon which the commissioner claimed the credit was allowed as provided by section 1324 of the revenue act of 1921. The petitioner thereupon protested to the commissioner against the allowance of interest under the revenue act of 1921 and claimed that it was entitled to interest upon said credits as provided by section 1019 of the revenue act of 1924, which claim the commissioner has denied.

All claims by the petitioner were duly filed and all conditions precedent to the bringing of this action have been complied with.

The court in an opinion handed down on July 5, 1928, held that the credit in question was not allowed on March 14, 1924, when the schedule of overassessment was forwarded to the collector at Boston, and that said collector did not act until after June 2, 1924; that the petitioner was entitled to recover interest computed in accordance with the provisions of section 1019 of the revenue act of 1924.

The defendant being aggrieved by the ruling of the court as hereinbefore set forth, now excepts to said ruling and brings this bill of exceptions and prays that it may be allowed.

By its attorneys.

FREDERICK H. TARR.
United States Attorney.
By J. DUKE SMITH.
Special Assistant to the U. S. Attorney.

The foregoing bill of exceptions may be allowed.

CHARLES W. MULCAHY.
Attorney for petitioner.

The foregoing bill of exceptions is allowed this 5 day of Nov., 1928.

ELISHA H. BREWSTER, *D. J.*

15 [Memorandum.—Copies of schedule of overassessments and schedule of refunds and credits, marked, respectively, "A" and "B," and referred to in the foregoing bill of exceptions as annexed are here omitted, as they already appear as part of the agreed statements of facts on pages 6–9 of this transcript of record. James S. Allen, Clerk.]

In United States District Court

Opinion

July 5, 1928

[Published 27 Fed. 2d, 395]

BREWSTER, J.

This petition is brought to recover interest on an overassessment of income and profit taxes paid for the fiscal year 1918 and applied as a credit against outstanding taxes for other years.

The Government has paid interest, computed according to section 1324 (a) of the revenue act of 1921. The petitioner claims to be entitled to interest computed in accordance with the revenue act of 1924, section 1019.

It has recently been held that interest on refunds must be computed according to the rule in force at the time of the allowance of the refund. United States v. Magnolia Petroleum Co. — U. S. — 72 L. Ed. 264. Blair, Commissioner v. U. S. ex. rel. Birkenstock et al., 271 U. S. 348. That the same would hold true in the case of a claim for credit is obvious. I infer that the Government up to this point draws no distinction between a refund and a credit, and if, as the defendant contends, the petitioner's credit was allowed within the meaning of the statute prior to June 2, 1924, the effective date of the 1924 revenue act, the interest was correctly computed.

On the other hand, if the "allowance" of the credit was subsequent to that date, the act of 1924 establishes the rule then in force and the petitioner would be entitled to recover interest on the credit, as provided in section 1019 of that act. The question, therefore, is when was the credit allowed?

The case was submitted on an agreed statement of facts.
16 It appears that on March 14, 1924, the Commissioner of Internal Revenue determined that there had been an overassessment of $23,181.08, and forwarded to the collector of internal revenue at Boston a schedule of overassessments containing this item. This schedule carried instructions to the collector to immediately check the items against the accounts of the several taxpayers and "If any part of such item is found to be an overpayment" to "examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in" his accounts, the credits and any refundable balance to be entered by the collector in a subsidiary schedule, necessary copies of which were to be returned to the Commissioner of Internal Revenue.

These instructions were followed, and on July 11, 1924, the collector certified that he had checked the items in the schedule, and had determined the amount of overpayments, and had applied indicated amounts as credits on the taxpayer's accounts, and had determined net amounts refundable. On the same date the collector certified to the subsidiary schedule, which, so far as it listed items of refundable portions of overassessments, was approved on July 31, 1924, by the Deputy Commissioner of Internal Revenue.

If we were here dealing with a refund, there could be no question raised as to the date of the allowance. It would be July 31, 1924, the date when the refund was approved for payment by the disbursing officer. Girard Trust Co. et al. v. United States, 270 U. S. 163. But in the case at bar there was no refund, and the Government contends that, notwithstanding Girard Trust Co. v. United States, the date of the allowance of a credit is the date under which the commissioner transmits to the collector a schedule of overassessments.

In the Girard Trust Company case, the overassessment was applied
in part as an abatement, in part as a credit, and the balance as
17 a refund. The court considers only the taxpayer's right to interest on the refund. The amount of the credit was relatively, inconsequential. Apparently the trust company made no claim to interest on the credit. It was there held that neither the date of payment of the amount refunded nor the date when the Commissioner of Internal Revenue first decided that there had been an overassessment and sent his decision to the collector of internal revenue was the date of allowance intended by the statute. The real date of allowance was the time when the exact amount of the refund was finally fixed by competent authorities. Until that time

no one had authority to pay. There are possible grounds for distinguishing between a refund and a credit. It will be noted that the collector, without further action on the part of the commissioner, was authorized to enter upon the petitioner's account a credit against outstanding taxes due from it. His authority to record this credit was contained in the schedule of overassessments. However, I think, in view of Girard Trust Company v. United States, supra, it can be taken as settled that the transmission of the schedule of overassessments does not constitute an allowance of either a credit or a refund. A ministerial act of another administrative officer is necessary before it can be determined that there will be any credit or before the exact amount of it can be ascertained. In the case at bar the first administrative act of the collector, with reference to the petitioner's credit, was to ascertain that there had been an overpayment of the tax for the fiscal year 1918 and to apply that overpayment to reduce outstanding taxes due for other years. Until then, to borrow from the language of the Chief Justice in the Girard Trust Company case, the exact amount of the credit was "not fixed finally by competent authority."

Inasmuch as the sole controversy is whether the revenue act of 1921 or that of 1924 applies, it is not necessary to decide whether interest should run to July 11, the date of the credit, or to
18 July 31, the date of the approval by the deputy commissioner. In either case the date is subsequent to June 2, 1924. For the purposes of this case if is sufficient to decide that the credit was not allowed on March 14, 1924, when the schedule of overassessments was forwarded to the collector at Boston. The agreed statement of facts shows plainly that he did not act until after June 2. Either date, July 11 or July 31, could be adopted without encountering the administrative complications pointed out by the court in the Girard Trust Company case in rejecting the date of payment as the date of allowance.

I confess that I am somewhat moved to my conclusion by the feeling that the results are in harmony with the purposes and intent of Congress to fairly recompense taxpayers who have been deprived of the use of their money by illegal exactions of the Government, as that intent and purpose is reflected in the later act of 1924.

I find nothing of compelling force in the arguments advanced by the Government in support of its contention that the credit was allowed when the commissioner first reported to the collector an overassessment.

I find and rule, therefore, that the plaintiff is entitled to recover interest computed in accordance with the provisions of section 1019 of the revenue act of 1924.

IN UNITED STATES DISTRICT COURT

Defendant's petition for appeal and order allowing same

Filed February 13, 1929

United States of America, defendant, appellant herein, feeling aggrieved by the order and judgment made and entered in this court on the twenty-eighth day of November, 1928, in favor of the plaintiff and against the defendant, hereby appeals from said order and judgment to the United States Circuit Court of Appeals for the First Circuit for the reasons set forth in the assignment of errors filed herewith.

19 Wherefore your petitioner prays that the appeal be allowed and citation issued as provided by law, and that a transcript of the record, proceedings, and all other papers on which said judgment and order were based, duly authenticated, be sent to the United States Circuit Court of Appeals for the First Circuit under the rules of said court and in accordance with the law in such case made and provided.

FREDERICK H. TARR,
United States Attorney.
J. DUKE SMITH,
Special Assistant to the U. S. Attorney.

Petition for appeal allowed.

ELISHA H. BREWSTER,
U. S. District Judge.

In United States District Court

Defendant's Assignment of Errors

Filed February 13, 1929

The defendant in this action in connection with its petition for appeal makes the following assignment of errors, which it avers occurred in the trial of the case, to wit:

1. The court erred in ruling that the petitioner was entitled to recover interest computed in accordance with the provisions of section 1019 of the revenue act of 1924.

2. The court erred in failing to rule that the petitioner was entitled to recover interest computed in accordance with the provisions of section 1324 of the revenue act of 1921.

3. The court erred in failing to rule that the credit in question was allowed when the Commissioner of Internal Revenue signed the schedule of overassessments on March 14, 1924.

4. The court erred in ruling that the petitioner was entitled to recover.

20 Wherefore the defendant prays that the judgment of the District Court be reversed.

By its attorneys,

FREDERICK H. TARR,
United States Attorney.
By J. DUKE SMITH,
Special Assistant to the U. S. Attorney.

[Citation in usual form showing service on Charles W. Mulcahy omitted in printing.]

21–22 [Clerk's certificate to foregoing transcript omitted in printing.]

In United States District Court

Memorandum re order enlarging time

[Memorandum.—An order of enlargement of time for docketing case to and including March 29, 1929, is here omitted. A. I. Charron, clerk.]

23–24 [Minute entry of argument and submission, Oct. 3 and 4, 1929, omitted in printing.]

In United States Circuit Court of Appeals, First Circuit

Judgment

November 5, 1929

This cause came on to be heard October 3 and 4, 1929, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, it is now, to wit, November 5, 1929, here ordered, adjudged, and decreed as follows: The judgment of the District Court is affirmed.

By the court.

ARTHUR I. CHARRON, *Clerk.*

25 In United States Circuit Court of Appeals, First Circuit

October term, 1929

No. 2344

UNITED STATES OF AMERICA, RESPONDENT, APPELLANT

v.

BOSTON BUICK COMPANY, PETITIONER, APPELLEE

No. 2377

SAME v. IRON CAP COPPER COMPANY

Appeal from District Court of the United States for the District of Massachusetts

Before ANDERSON, WILSON AND HALE, *JJ.*

(35 Fed. 2d 560)

Opinion

Filed November 5, 1929

WILSON, *J.*

These two cases are before this court on appeal by the United States from decisions of the District Court of Massachusetts. As the same question is involved in both cases and they were argued together, one opinion will suffice to dispose of them.

The material facts in the Iron Cap Copper Company creating the issue here raised are as follows:

An examination and audit of the tax returns of the appellee for the year 1918 disclosed that the appellee had been overassessed in that year to the amount of $180322.66. On March 29, 1924, the commissioner approved a schedule of overassessments con-
26 taining a list of taxpayers who had been overassessed for the year 1918, in which was included the overassessment of the appellee in the above amount.

The schedule was made out on a form then in use in the department and known as Form 7805, which was forwarded to the collector of internal revenue at Boston with the following general instructions which were printed thereon:

"You will immediately check such items against the accounts of the several taxpayers and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

"If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against taxes due, if any;" and with further instructions to enter such credits and any balance in appropriate columns of the schedule of overassessments and in a subsidiary schedule then in use and designated as Form 7805A and return both form to the commissioner's office.

After the collector had conformed to these instructions, it was found that the status of the taxpayer's account required an abatement to the amount of $48,539.94, and that there had been an overpayment by the appellee of $131,782.72. He therefore credited against taxes previously assessed against the taxpayer and unpaid the sum of $102,931.89, which left a balance to be refunded to the taxpayer of $28,850.83. In accordance with above directions of the commissioner, he so reported to the commissioner on July 14, 1924, on Form 7805A, and on August 7, 1924, the deputy commissioner reported to the commissioner that the amount reported by the collector as refundable had been found correct, and together with the accrued interest set forth in the subsidiary schedule on Form 7805A was due the taxpayer. Whereupon the commissioner authorized the disbursing clerk in the Treasury Department to pay the refundable amount to the plaintiff.

27 In the Boston Buick Company case the material facts are as follows:

On the fourteenth day of March, 1924, the commissioner on Form 7805 certified to the collector at Boston that the plaintiff had been overassessed for the year 1918 to the amount of $23,881.08. The collector, following the general directions contained in Form 7805, reported back July 11th, 1924, that there had been an overpayment by this taxpayer equalling the total amount of the overassessment, which he credited on other taxes due from the taxpayer. On July 31 the deputy commissioner and the commissioner signed the usual blanks contained in Form 7805A, directing the payment of any sum disclosed by the reports of the collector as refundable.

Interest in the Iron Cap Copper Company case was allowed and paid on the amount refunded in accordance with the decision of the Supreme Court in the case of Girard Trust Company v. United States, 270 U. S. 163, but no interest was allowed on the sums credited on other taxes due from the taxpayer, either in the Iron Cap Copper Company or the Boston Buick Company. These actions are respectively brought to recover interest on the credits which the plaintiffs say should be computed under section 1019 of the revenue act of 1924, the relevant part of which reads as follows:

SEC. 1019. "Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected * * * interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum," etc.

The issue in both cases is whether the credits were allowed when the commissioner on March 14 and on March 29, 1924, certified to the collector on Form 7805 that there had been an overassessment and directed him to determine what, if any, part of the taxpayer's assessment should be abated, and if there was an overpayment, what, if any, part should be credited to other payments due from the taxpayer, or whether the credits were allowed when the collector made his report of the status of the taxpayer's account and the
28 abatements and credits allowed by him, and the commissioner, expressly or impliedly, approved his report.

The date of the allowance of the credits is the crux of both cases, since if the allowance of the credits within the meaning of the revenue acts was made when the commissioner certified to the collector the amount of the overassessments on March 14 and March 29, 1924, interest on credits must be computed under section 1324 of the revenue act of 1921, under which it is agreed by the taxpayer that no further interest should be allowed; but if the credits were not allowed until the collector had examined his accounts and determined the amount of the overpayment, if any, and the amounts then due from the taxpayer for other periods, which it is agreed was on July 11, 1924, in the Boston Buick case and on July 14th in the Iron Cap Copper Company case, or until he had made his report to the commissioner and it had expressly or impliedly received his approval on July 31, 1924, in the Boston Buick Company case and on August 7th in the Copper Company case, then it is admitted by the Government that under the decisions of the Supreme Court, Blair v. United States ex rel. Birkenstock et al., 271 U. S. 348; United States v. Magnolia Petroleum Co., 276 U. S. 160, interest should be computed under section 1019 of the revenue act of 1924, which became effective June 2, 1924, and that under section 1019 there would be due the plaintiff, Iron Cap Copper Company, as interest the sum of $11,592.18 and to the Boston Buick Company the sum of $6,675.83.

The court below found for the plaintiff in each case and in the above amounts. This court is of the opinion that the contention of the plaintiffs must be sustained and the appeals dismissed.

Prior to the revenue act of 1926 there is nothing on which to base the contention of the Government that the allowance of an overassessment is an allowance of credits, except a regulation of the Treasury Department and its persistent practice in so holding.

The commissioner, who is the final arbiter in such matters, when he determines that there has been an overassessment has no knowledge of what the status of any taxpayer's account is, whether it will disclose that there has been an overpayment
29 and, if so, whether there will be any sums due from the taxpayer for other periods to which the overpayments should be credited, or whether the overpayment must all be refunded. While Form 7805, containing the schedule of overassessments, contains a

direction to the collector if any overpayment is found to apply first to other taxes which may be then due from the taxpayer for other periods and enter any balance in appropriate columns in Form 7805 and 7805A as refundable, yet the action of the collector is not final.

The Supreme Court in Girard Trust Co. v. United States, speaking through its Chief Justice, said:

"The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and a refund or credit should be granted, and when he has made that decision finally, he has allowed the claim for the refund or credit of the taxes paid within the meaning of the section."

Again:

"The finding and the exhibits show that the course of business is that the collector on receiving from the commissioner the schedule as to the overassessment, examines his books and reports back to the bureau the amount which should be credited on taxes due and the amount to be refunded, that this is examined by the assistant commissioner and then is delivered to the commissioner, who makes it effective by his approval."

While it is true that the issue involved in the Girard Trust Company case related only to the date of the allowance of a refund, the court, though by way of dictum, as it may be argued, also as definitely fixed the time of the allowance of credits. Its dictum as to the time of allowance of credits was, we think, an inevitable conclusion from its finding as to the time of allowance of a refund, since the amount to be refunded is absolutely determined when the credits are allowed. It is no answer to say that the directions in Form 7805 are authority to the collector to apply any overpayment on any unpaid taxes for other periods and is therefore an allowance of such credits as the collector may see fit to make. It would be a strained construction of the commissioner's directions to the collector to hold that he thereby allowed and approved something of which he had no knowledge and could have none until a report was received back from the collector.

The Government, however, urges that the regulations of the Treasury Department and its practice has established a different rule as to credits, which should have great weight in construing these statutes; but it also, prior to the decision in the Girard Trust Company case, had the same regulation as to the date of allowance of refunds; yet the court in that case held that a regulation of the Treasury Department and its practice in this respect was not in accord with the statute, and that it did not control the plain effect of the acts of the commissioner and the collector. No good reason is now shown why the department regulation as to the allowance of

credits should control what appears to be the only reasonable inference to be drawn from the facts.

It is also urged by the Government that since Congress, presumably in view of the court's decision in the Girard Trust Co. case, has by its fiat in the revenue act of 1926 fixed the date of the allowance of refunds as the date of the issuing of the schedule of overassessments by the commissioner, and made no provision for fixing the date of the allowance of credits: that it is in effect a recognition by Congress of the regulation and practice of the Department as to the correct construction of the prior acts and of the commissioner's instructions to the collector as to the date of the allowance of credits.

How the Supreme Court may construe the effect of the revenue act of 1926 as to the time of allowance of future credits we can not anticipate; but so long as its decision stands as to the time of allowing a refund prior to the enactment of the 1926 act we thing that the time of allowance of credits, if any, at least prior to that act, must be the same as that of the allowance of a refund or when the commissioner or his deputy approved the collector's report of his doings on Form 7805A.

The decision in Penn Smokeless Coal Co. v. United States,
31 decided in the Western District of Pennsylvania, January 3, 1929, is of little weight to the contrary, inasmuch as the sitting judge in that case inadvertently misconstrued the opinion of the Chief Justice in the Girard Trust Co. case.

The Court of Claims, however, in the case of Swift & Co. v. United States, decided May 6, 1929, followed the opinion of the Supreme Court as applied to the allowance of credits.

Even if large sums have been credited to taxpayers without the signature of the commissioner on the collector's report after it is returned to his office, it can not change the law, though it does not follow from facts stated by counsel in argument that the commissioner's assent to the report of the collector may not in each case have been implied.

In United States Circuit Court of Appeals

The judgments of the district court are affirmed.

Order staying mandate

Thereafter, to wit, on January 2, 1930, upon motion by appellant, assented to, mandate was stayed until further order of court.

[Clerk's certificate to foregoing transcript omitted in printing.]

32 Supreme Court of the United States

Order allowing certiorari

Filed March 17, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1930

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1929~~ 1930

No. ~~685~~ 43

THE UNITED STATES OF AMERICA, PETITIONER

vs.

IRON CAP COPPER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 5, 1930
CERTIORARI GRANTED MARCH 17, 1930

(34764)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 633

THE UNITED STATES OF AMERICA, PETITIONER

vs.

IRON CAP COPPER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

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[Caption omitted in printing.]

In United States District Court, District of Massachusetts

No. 3463, Law Docket

IRON CAP COPPER COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

Petition

Filed November 19, 1928

Respectfully represents your petitioner, Iron Cap Copper Company, as follows:

That your petitioner is a corporation duly organized and existing under the laws of the State of Maine; that its principal place
2 of business was in the City of Boston, Massachusetts, until about July 1, 1925, and that since that time its principal place of business has been in the City of Beverly, Massachusetts, both within the district of this honorable court.

2. That the controversy which is the subject matter of this petition arises under the laws of the United States provided for internal revenue and particularly under the act of Congress commonly referred to as the revenue act of 1924, and of certain regulations and rulings of the Treasury Department of the Government of the United States; that the amount of the claim involved in this petition exceeds ten thousand dollars ($10,000) and that the collector of internal revenue by whom the tax hereinafter referred to was collected, and who held that office at the time the obligation herein referred to for payment of interest to your petitioner accrued, is not in office as collector of internal revenue at the time this proceeding is commenced.

3. That your petitioner under and in accordance with the revenue laws of the United States then in force duly filed its returns for income and profits taxes for the year 1918; that following the filing of said returns income and profits taxes were assessed or purported to be assessed upon your petitioner for said year, 1918, in the sum of one hundred eighty-three thousand ninety-nine dollars and seventy-eight cents ($185,099.78); that subsequently, to wit, in or about May, 1921, an additional income and profits tax was assessed or purported to be assessed for the year 1918 upon your petitioner in the sum of forty-eight thousand five hundred thirty-nine dollars and ninety-four cents ($48,539.94), said original and additional taxes aggregating two hundred thirty-one thousand six hundred thirty-nine dollars and seventy-two cents ($231,639.72); that said original tax of one hundred

eighty-three thousand ninety-nine dollars and seventy-eight
3 cents ($183,099.78) was duly paid by your petitioner to the collector of internal revenue as Boston, Massachusetts, on the following dates and in the following amounts:

March 15, 1919	$50,000.00
June 16, 1919	41,549.89
September 15, 1919	46,000.00
December 15, 1919	45,549.89
Total	183,099.78

but that said additional tax or forty-eight thousand five hundred thirty-nine dollars and ninety-four cents ($48,539.94) was not paid.

4. That petitions for abatement, credit, and refund with respect to said taxes for 1918 were duly and seasonably filed by your petitioner and that on or about March 29, 1924, the Commissioner of Internal Revenue determined that the correct tax liability of the petitioner for said year 1918 was fifty-one thousand three hundred seventeen dollars and six cents ($51,317.06), indicating an overassessment for said year of one hundred eighty thousand three hundred twenty-two dollars and sixty-six cents ($180,322.66), and on information and belief that an overassessment in the said amount for 1918 was allowed with other items to various taxpayers on a schedule of overassessments signed by the commissioner on said date, March 29, 1924, and was at some time thereafter forwarded to the collector of internal revenue at Boston, Massachusetts; on information and belief that thereafter and subsequent to June 2, 1924, the effective date of the revenue act of 1924, to wit, on or about July 14, 1924, the collector of internal revenue at Boston reported to the commissioner with respect to said total overassessment upon your petitioner of one hundred eighty thousand three hundred twenty-
4 two dollars and sixty-six cents ($180,322.66) that the amount of forty-eight thousand five hundred thirty-nine dollars and ninety-four cents ($48,539.94) (being the amount of the said additional assessment of May, 1921) should be abated; that one hundred two thousand nine hundred thirty-one dollars and eighty-nine cents ($102,931.89) should be credited on taxes of other years, to wit, the years 1913 to 1917, inclusive, and that twenty-eight thousand eight hundred fifty dollars and eighty-three cents ($28,850.83) should be refunded; that said collector further reported to the commissioner under said date, July 14, 1924, that the said amounts indicated for abatement and credit had been so applied; that also under said date the said collector prepared a subsidiary or secondary schedule of refunds and credits as prescribed by said commissioner, to which were transferred the net amounts refundable and amounts credited and on information and belief that the said amount of one hundred two thousand nine hundred thirty-one dollars and eighty-nine cents ($102,931.89) was credited by the collector to the taxes then due from the petitioner for other years on

or about said date, July 14, 1924, and subsequent to June 2, 1924, the effective date of said revenue act of 1924.

5. On information and belief that the taxes against which the said credit was taken were additional assessments for the years 1913 to 1917, inclusive, as follows:

Tax year	Date of assessment	Amount credited	Tax year	Date of assessment	Amount credited
1916a	May, 1921	$59.85	1915a	March, 1924	$14.74
1917a	May, 1920	50,962.85	1914a	March, 1924	17.30
1917a	May, 1921	20,061.60	1913a	March, 1924	20.04
1917a	June, 1918	6,300.77			
1917a	March, 1924	25,476.33	Total		102,931.89
1916a	March, 1924	18.41			

5 6. That on or about October 31, 1927, request was made of the Commissioner of Internal Revenue on behalf of your petitioner for allowance of interest on the amount of said credits of one hundred two thousand nine hundred thirty-one dollars and eighty-nine cents ($102,931.89) and for payment of such interest, and that on or about February 21, 1928, the commissioner declined to allow such interest on the ground that no interest was legally due.

Wherefore your petitioner prays:

(1) That this honorable court adjudicate that your petitioner is entitled to interest on said amounts of credits at the rate of six per centum (6%) per annum from the dates when such tax for the year 1918 was paid as aforesaid to the dates of the additional assessments against which said credits were applied.

(2) That a judgment or decree be entered by this honorable court against the respondent and in favor of your petitioner for the amount of such interest.

(3) That such order or orders as may be deemed necessary or proper in order to require and enforce the payment of the amount of such judgment or decree to your petitioner be issued to the Treasurer of the United States and/or such other proper disbursing officers or agents as the court may determine.

(4) For such other relief as to this honorable court may seem proper in the premises.

IRON CAP COPPER COMPANY,
By s/ ROLAND H. KNIGHT,
Its Treasurer.
TYLER, EAMES, WRIGHT & HOOPER,
BURTON E. EAMES,
Attorneys.

6 [*Duly sworn to by Roland H. Knight; jurat omitted in printing*]

In United States District Court

Answer

Filed December 19, 1928

Now comes the defendant and for answer to the plaintiff's petition denies each and every material item, allegation, count, and particular in the petition contained.

By its attorneys.

FREDERICK H. TARR,
United States Attorney.
By J. DUKE SMITH,
Special Asst. to the U. S. Attorney.

In United States District Court

Agreed statement of facts

Filed March 29, 1929

It is hereby stipulated and agreed, by and between the parties hereto by their respective attorneys, that the following
7 facts, so far as competent and material, shall be taken as true, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true.

I

Petitioner, Iron Cap Copper Company, is and at all times was a corporation organized and existing under the laws of the State of Maine with its principal office and place of business in the city of Boston in the State of Massachusetts until on or about July 1, 1925, and that since that time its principal office and place of business has been in the city of Beverly in the State of Massachusetts.

II

Petitioner filed income-tax returns for the years 1913 to 1916, inclusive, and paid the taxes shown therein.

III

On April 5, 1918, petitioner filed income and excess profits tax returns for the year 1917, from which it appeared that the tax due thereon was $78,526.52, which tax was paid on June 25, 1918. Subsequent thereto the Commissioner of Internal Revenue made on August 20, 1918, duplicate additional assessments of tax for the said year in the amounts of $36,258.60, $36,250.60 of which was abated on

September 30, 1919, and $29,957.83 of the other $36,258.60 was paid on August 18, 1920, leaving an unpaid balance of $6,300.77, which was subsequently included in a claim for credit filed by the petitioner.

IV

8 On June 24, 1919, petitioner filed an income and profits tax return for the year 1918, from which it appeared that the tax due thereon was $183,099.78, which tax was paid as follows:

March 19, 1919	$50,000.00
June 24, 1919	41,549.89
September 17, 1919	46,000.00
December 17, 1919	45,549.89
Total	183,099.78

V

After an examination and an audit of the income and excess-profits tax returns for the year 1917, the Commissioner of Internal Revenue, in a letter dated March 3, 1920, signed by G. V. Newton, acting assistant to the commissioner, notified claimant of his determination, which is as follows: Year, 1917, underpayment, $50,962.85.

VI

On May 25, 1920, the Commissioner of Internal Revenue made an additional assessment of the underpayment of tax for the year 1917 in the amount of $50,962.85.

VII

After an examination and an audit of the income-tax return for the year 1916, income and excess profits tax returns for the year 1917, and the income and profits tax return for the year 1918, the Commissioner of Internal Revenue, in a letter dated March 31, 1921, signed by E. H. Batson, acting deputy commissioner, notified claimant of his determination, which is as follows:

9

Year:	Underpayment
1916	$59.85
1917	20,061.60
1918	48,539.94
Total	68,661.39

VIII

On June 11, 1921, the Commissioner of Internal Revenue made additional assessments of the underpayment of taxes for the years 1916 to 1918, inclusive, in the amount of $68,661.39 as shown in Paragraph VII above.

IX

On August 20, 1921, petitioner filed two claims for credit of:

(1) $83,424.95, 1918 income and profits tax, to be applied as a credit against the additional assessment of income and excess-profits taxes for the year 1917 as follows:

Unpaid balance of the June 1918 additional assessment	$12,400.50
Additional assessment made July, 1920	50,962.85
Additional assessment made August, 1921	20,061.60
Total	83,424.95

A copy of the claim for credit is hereto attached, marked "Exhibit 1" and made a part hereof;

(2) $59.85, 1918 income and profits tax to be applied as a credit against the additional assessment of tax for the year 1916. A copy of the claim for credit is hereto attached, marked "Exhibit 2" and made a part hereof.

10 On the same date petitioner filed a claim for the abatement of $48,539.94, income and profits tax for the year 1918, referred to in Paragraph VII above.

X

After an examination and an audit of the income tax returns for the year 1913 to 1916, inclusive, income and excess-profits tax returns for the year 1917 and income and profits tax return for the year 1918, the Commissioner of Internal Revenue, in a letter dated January 28, 1924, signed by J. G. Bright, deputy commissioner, notified claimant of his determination, which is as follows:

Year	Underpayment	Overassessment	Year	Underpayment	Overassessment
1913	$20.04		1917	25,476.33	
1914	17.30		1918		$180,322.66
1915	14.74				
1916	18.41		Totals	25,546.82	180,322.66

XI

On March 20, 1924, the Commissioner of Internal Revenue made additional assessments of the underpayment of taxes for the years 1913 to 1917, inclusive, in the amount of $25,546.82, as shown in Paragraph X above.

XII

On March 29, 1924, the Commissioner of Internal Revenue approved a schedule of overassessments known and designated as Schedule IT:A-9751 on Form 7805. Said schedule of over-

11 assessments embraced, among other overassessments, an overassessment in favor of the petitioner in the amount of

$180,322.66 for the year 1918. Said schedule of overassessments was transmitted to the Collector of Internal Revenue for the District of Massachusetts for his action in accordance with the direction appearing thereon.

XIII

Said Collector of Internal Revenue complied with the direction appearing thereon, and on July 14, 1924, signed the certificate thereon stating that the items had been checked against the accounts of the respective taxpayers; that the amounts indicated had been applied as abatements and credits against their accounts and returned said schedule to the Commissioner of Internal Revenue together with schedule of refunds and credits known and designated as Schedule IT:R–9751 on Form 7805A.

XIV

A certified copy of Schedules IT:A–9751, IT:R–9751, and certificate of overassessment for the year 1918 in the amount of $180,322.66 is hereto attached, marked "Exhibit 3," and made a part hereof.

XV

The overassessment of $180,322.66 for the year 1918 was adjusted as follows:

12

Amounts credited	Year against which credited	Dates of assessment
$6,300.77	Add'l assessment 1917	8-18-18
50,992.85	" " "	5-25-20
59.85	" " 1916	6-11-21
20,061.60	" " 1917	6-11-21
20.04	" " 1913	3-20-24
17.30	" " 1914	3-20-24
14.74	" " 1915	3-20-24
18.41	" " 1916	3-20-24
25,476.33	" " 1917	3-20-24
102,931.89	total amount credited.	
48,539.94	additional assessment of tax for the year 1918 abated.	
28,850.83	approved for refundment purposes.	
180,322.66	amount of overassessment for 1918.	

XVI

On August 7, 1924, the Commissioner of Internal Revenue approved a schedule of refunds and credits, IT:R–9751, showing the amount refundable as $28,850.83 and authorized the disbursing clerk of the Treasury Department to issue a check for that amount. On September 16, 1924, a Treasury check in the amount of $28,850.83 was mailed to the petitioner through the office of the collector of internal revenue at Boston, Massachusetts.

XVII

In a letter dated August 31, 1927, the petitioner, through its attorney, requested the Commissioner of Internal Revenue to allow interest on the overassessment in the amount of $180,322.66 for the
13 year 1918. In a letter dated February 21, 1928, the petitioner was advised by the Commmissioner of Internal Revenue of the allowance of interest in the amount of $8,033.57 on $28,850.83, the amount refunded, from December 17, 1922, the date of payment, to August 7, 1924, the date of allowance of the refund.

XVIII

On May 11, 1928, the Commissioner of Internal Revenue approved a schedule of overassessments known and designated as Schedule IT–29959 on Form 7920, based on the computation and allowance of interest in the amount of $8,033.57. A Treasury check for the amount referred to above, $8,033.57, was mailed to the petitioner on May 15, 1928.

XIX

No interest has been assessed or paid on the underpayment of taxes for the year 1913 to 1918, inclusive, referred to in paragraphs 5, 7, and 10.

XX

No further interest has been allowed or paid on account of the overassessment of $180,322.66 for the year 1918.

XXI

That the collector of internal revenue by whom the taxes herein referred to were collected and who held that office at the time of the determination of the overassessments for 1918 and of the application of the overpayments of such overassessments as credits on taxes for other years, all as herein set out, resigned said office on November 30, 1925, and was not in office as collector of internal revenue at the time when the petition herein was filed.

BURTON E. EAMES,
Attorney for Petitioner,
FREDERICK H. TARR,
United States Attorney,
By J. DUKE SMITH,
Special Asst. to the U. S. Atty.,
Attorneys for Defendant.

CERTIFICATES 2d

I certify that an examination of the records of the Commissioner's Office shows the following facts as to the assessment and payment of the tax:

ASSESSMENT OVERPAID

NAME OF TAXPAYER.	CHARACTER OF ASSESSMENT AND PERIOD COVERED.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.	DATE PAID.
Iron Cap Copper Co	Corp Inc	4c	40	2	63		182099 78	
	1917						50000 00	3-19-19
50 Congress St	403-15-20	6	32318.47	Jan	5	20	41549 89	6-24-19
	1919 7-30-20	6	34094.88	July	9	20	46000 00	9-17-19
Boston	47c 7-30-20	6	32,318.47	July	9	20	45549 89	12-17-19
	47c F-10-21 for	54	31936	9	9	21		
	1918 (war) 8-10-21 for		3424.95					
	1918 Add'l May 1921							
	47 - 8/20/21 for		4,2-3424.95				9/9/21	

Assessment Clerk, Internal Revenue Bureau. Collector of Internal Revenue.

ASSESSMENT TO BE CREDITED

NAME AND ADDRESS.	CHARACTER OF ASSESSMENT OR ARTICLE TAXED.	PERIOD COVERED BY ASSESSMENT.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.
Iron Cap Copper Co	Corp Inc	1-22-20 to 5-31-21	1918	1921	May	1439	3	$74526.52 (Pd 6/14)
	1917 added							$20,061.60
50 Congress St	1917 Addl #1751053		(1917)	1920	May	39	9	50 968.85
Boston	47a - 7-30-20 for 32,318.47 MR							
	47a - 7-30-20 - 31.09488							
	47 Ref. 63362.35 - MR							

Assessment Clerk, Internal Revenue Bureau. Collector of Internal Revenue.

Form 47 A

District .....

Abatement Order No. .....

.....
(Nature of tax.)

Claimant .....

Address .....

Examined and submitted for action ....., 19....

Claim examined by—

Amount claimed, $.....

COMMITTEE ON CLAIMS:

ASSESSMENT OVERPAID

NAME OF TAXPAYER.	CHARACTER OF ASSESSMENT AND PERIOD COVERED.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.	DATE PAID.
Iron Cap Copper Co	Corrected 4/c 4a2E6.3						182099 78	
	1917						50000 00	3-19-19
50 Congress St	463-15-20 for 32,318.47						46549 89	6-24-19
	(469: 7-30-20 for 31,044.88)						46000 00	9-17-19
Boston	47C 5-10-21 for 54,319.36						45349 89	12-17-19
	47A(Corr) 8-10-21 for 34,24.95							
	1918 Addl. May 1921							
	47-9/20/21 for 48,038.96							

Assessment Clerk, Internal Revenue Bureau.

9/9/21

Collector of Internal Revenue.

ASSESSMENT TO BE CREDITED

NAME AND ADDRESS.	CHARACTER OF ASSESSMENT OR ARTICLE TAXED.	PERIOD COVERED BY ASSESSMENT.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.
Iron Cap Copper Co	Corrected 4/c 4a2E6.3	1917						74526.52 (9/6/21)
	1917 Addl.	May 1921						20,061.60
50 Congress St	1917 Addl. #1751053 (1917)			1920	May	59	9	50 968.85
Boston	47A-7-30-20 for 32,518.47							
	47A-7-30-20 - 31.044.88)							
	47 Ref. 63362.35-m90							

Assessment Clerk, Internal Revenue Bureau.

Collector of Internal Revenue.

Form 47 A

District .....

Abatement Order No. .....

.....
(Nature of tax.)

Claimant .....

Address .....

Examined and submitted for action ....., 19....

Claim examined by—
Claim approved by—
Chief of Division.

Amount claimed, $.....

Amount allowed, $.....

Amount rejected, $.....

COMMITTEE ON CLAIMS:

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14a

EXHIBIT 1

Claim for credit—Taxes paid in excess

561982 22612

Treasury Department,
U. S. Internal Revenue.
Form 47 A.—March, 1919.

Received, Claim Dept., Aug. 20, 1921.
Recorded Nov. 21, 1923, Claims Control Section.

STATE OF MASS.,
County of Suffolk, ss:

Iron Cap Copper Company, 50 Congress St., Boston, Mass.

This deponent being duly sworn according to law, deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to said claim are true and complete.

1. Business engaged in by claimant, copper mining, mass.
2. Character of assessment or tax, income and profits.
3. Amount of tax paid, $183,099.78; taxable year, 1918.
4. Portion of No. 3 claimed as a credit, $83,424.95.
5. Unpaid assessment against which credit is asked (see note), $83,424.95; taxable year, 1917.

Deponent verily believes that the amount stated in item 4 should be credited, and claimant now asks and demands credit of said amount for the following reasons:

This claim is filed in connection with the following claims: Abatement, $48,539.94; 1918 assessment, additional Aug. 13, 1921; refund, $54,319.36, 1918 overpayment; refund, $19,636.82, 1918 overpayment; credit, $59.85, 1918 overpayment against 1916 add'l assessment of Aug. 13, 1921; and is based upon statements and computations set forth in a letter to the department of this date, copy of which is attached hereto and made a part hereof.

Evidence showing payment of 1918 tax, $183,099.78 accompanies claim for refund filed this date.

NOTE.—The total unpaid assessments, item 5, comprise the following: June, 1918, $12,400.50 (unpaid portion of assessment of $36,258.60); July, 1920, $50,962.85; Aug., 1921, $20,061.60; total, $83,424.95, all additional.

(Signed) ROLAND H. KNIGHT,
Treasurer.

Sworn to and subscribed before me this 18th day of August, 1921.

[SEAL.] HERBERT N. SMITH,
Notary Public.

14c EXHIBIT 2

Claim for Credit—Taxes paid in excess

561981 22605

Treasury Department,
U. S. Internal Revenue.
Form 47 A.—March, 1919.

Received, Cl. Dept., Aug. 20, 1921.
Recorded Nov. 21, 1923. Claims Control Section.

STATE OF MASS.,
County of Suffolk, ss:

Iron Cap Copper Company, 50 Congress St., Boston, Mass.

This deponent being duly sworn according to law, deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to said claim are true and complete.

1. Business engaged in by claimant, copper mining, mass.
2. Character of assessment or tax, income and profits taxes.
3. Amount of tax paid, $183,099.78; taxable year, 1918.
4. Portion of No. 3 claimed as a credit, $59.85.
5. Unpaid assessment against which credit is asked, Aug., 1921, $59.85; taxable year, 1916.

Deponent verily believes that the amount stated in item 4-should be credited, and claimant now asks and demands credit of said amount for the following reasons:

This claim is filed in connection with the following claims: Abatement, $48,539.94, 1918 assessment, additional Aug. 13, 1921: refund, $54,319.36, 1918 overpayment: refund, $19,636.82, 1918 overpayment; credit, $83,424.95, 1918 overpayment against 1917 add'l assessments of June, 1918, $12,400.50 (unpaid portion of assessment of $36,258.60); July, 1920, $50,962.85; Aug., 1921, $20,061.60: and is based upon statements and computations set forth in a letter to the department of this date, copy of which is attached hereto and made a part hereof.

Evidence showing payment of 1918 tax, $183,099.78, accompanies claim for refund, $54,319.36, filed this date.

(Signed) ROLAND H. KNIGHT.
Treasurer.

Sworn to and subscribed before me this 18th day of August, 1921.
[SEAL.] HERBERT N. SMITH,
Notary Public.

CERTIFICATES

I certify that an examination of the records of the (Collector's / Commissioner's) Office shows the following facts as to the assessment and payment of the tax:

ASSESSMENT OVERPAID

NAME OF TAXPAYER.	CHARACTER OF ASSESSMENT AND PERIOD COVERED.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.		DATE PAID.
	1918 Corp. Inc.		1919	#403803			183099	78	
Iron Cap Copper Co.,	46: 3-15-20 for $2318.47 cl.					8d.	50000	00	3-19
	47A: 7-30-20 - 31044.88 (Dr.)					-	41549	89	6-24
50 Congress St.,	47A: " - 32318.47 in R39-20					-	46000	00	9-17
Boston, Mass.	46: 8-20-21 - $19,636.82 O/S 9-9-21					"	45549	89	12-17
47A: 8-20-21 - 59.85 (Dr.) (C. 917	47A: (Dr.) 8-20-21 - $3,424.95 (Cr.) 1917 Addl O/S 9-9-21								
Addl) O/S 10-4-21	1918 Addl.		May 1921	111	3		48539.94		
17-8/23/21	47-8/20/21 for $48539.94 - 9/9/21								

Assessment Clerk, Internal Revenue Bureau.

Collector of Internal Revenue.
10-4-21 CEL

ASSESSMENT TO BE CREDITED

NAME AND ADDRESS.	CHARACTER OF ASSESSMENT OR ARTICLE TAXED.	PERIOD COVERED BY ASSESSMENT.	LIST.	YEAR.	MONTH.	PAGE.	LINE.	AMOUNT.
Iron Cap Copper Co.,	1916 Addl			1921	May	111	1	59.85
50 Congress St., Boston	Corp. Inc.	47A: 8-20-21 for $59.85 O/S 10-5-21						

Assessment Clerk, Internal Revenue Bureau.

Collector of Internal Revenue.
10-5-21 CEL

Form 47 A

District .....

Abatement Order No. .....

(Nature of tax.)

Claimant .....

Address .....

Examined and submitted for action ....., 19....

Claim examined by—
Claim approved by—
Chief of Division.

Amount claimed, $.....

Amount allowed, $.....

Amount rejected, $.....

COMMITTEE ON CLAIMS:

.....

.....

.....

15 United States of America—General Accounting Office

Pursuant to the act of June 10, 1921, 42 Stat. 24, I hereby certify that the annexed documents, numbered 1–1, 1–2, and 2–1 to 2–8, inc., are true copies of the official documents now on file in the General Accounting Office in the following case:

Iron Cap Copper Company

In witness whereof, I have hereunto set my hand and caused the seal of the General Accounting Office to be affixed this 6th day of February, in the year 1929, at Washington.

[SEAL.] DUSTIN R. GINN,
Assistant Comptroller General of the United States.

General Accounting Office—Form 7a.

16 Exhibit C

Item =6—Iron Cap Copper Company—Credits

$25,476.33	Mar., '24,	P1–1	Sp23—	1917a	3/29/24.		
18.41	"	"	1–0	"	"	—1916a	"
14.74	"	"	0–9	"	"	—1915a	"
17.30	"	"	0–8	"	"	—1914a	"
20.04	"	"	0–7	"	"	—1913a	"
59.85	May, '21,	P111–1—	1916a	8/13/21.			
50,962.85	May, '20,	P39–9—	1917a	7/21/20.			
20,061.60	May, '21,	P111–2—	1917a	8/13/21.			
6,300.77	June, '18,	P137–6—	1917a	8/27/18.			
102,931.89							

16a Treasury Department
U. S. Internal Revenue
Service
Form 7805
Form approved by Comptroller General
Feb. 5, 1923

EXHIBIT 3

Schedule of overassessments and allowance of abatements, credits, refunds, and related claims, if any

Income tax unit—Authorization of commissioner

Original.—Voucher to General Accounting Office.—C-21048.

Schedule No. IT-A.
Sheet 1 of 2 sheets.

IMMEDIATE.—This schedule must be executed and all required steps taken without delay.—*Commissioner of Internal Revenue.*

To the Collector, District of Massachusetts:

The amounts listed in column 4 as overassessments or reductions of tax liability are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the "Certificates of Overassessment" or "Notices of Adjustment of Refund" attached thereto.

You will immediately check such items against the accounts of the several taxpayers, and determine whether the amounts by which the tax liabilities have been reduced should be respectively abated, in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts. (This applies only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of Refunds and Credits (Form 7805-A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an appropriate *memorandum* made upon the taxpayer's account.

You will thereupon complete and certify this schedule and the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Revenue.

Mar. 29, 1924.

D. H. BLAIR,
Commissioner of Internal Revenue.

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The returns of the taxpayers listed herein, together with their claims (if any) and appropriate supporting evidence, have been carefully examined and the tax liability of the respective taxpayers has been determined in accordance with the available facts and the law. The overassessments or reductions in tax liability appearing in column 4 are accordingly recommended for allowance.

Mar. 29, 1924.

J. G. BRIGHT,
Deputy Commissioner.

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

July 14, 1924.

M. E. NICHOLS,
Collector, District of Mass.

Collector, District of Mass.

Item No.	Certificate of overassessment or claim number	Name and address of taxpayer	Overassessments or reductions of tax liabilities (amount)	List, page, and line, or account number	Taxable year	Entries to be made by the collector: Abatement (amount)	Overpayment (amount)	Credit (amount carried to Form 7805-A)	Account credited; list, page, and line	Due date of items against which credit was made	Net amount refundable carried to Form 7805-A	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
6	241355	Iron Cap Copper Co	$180,422.66	Mar. '21, p. 411, 13	18	$48,539.94	$131,782.72	See attached for credits			$28,850.83	" "
7	241467	Iron Cap Copper Co	258.29	June, '21, p. 100, 19	19	258.29						" "

Treasury Department
U. S. Internal Revenue Service
Form 7805-A
Form approved by Comptroller General
Feb. 5, 1923

Immediate.—This schedule must be executed and all required steps taken without delay.—Commissioner of Internal Revenue.

Schedule of refunds and credits—Illegal or erroneous collections—Income tax unit

Original—Voucher to General Accounting Office—C 22868.

Schedule No. IT R 9751
Dist. of Mass.
D. C. Voucher No. 184

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items hereon are relisted as they appeared for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit.

July 14, 1924.

M. E. Nichols,
Collector, District of Mass.

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due.

August 7, 1924.

J. G. Bright,
Deputy Commissioner.

AUTHORIZATION OF COMMISSIONER

To the Disbursing Clerk, Treasury Department:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due. Payment may, therefore, be made in the amounts shown in column 7.

August 7, 1924.

D. H. Blair,
Commissioner of Internal Revenue.

Unit	Notations	Date
A & C	Hz	8/11/24

Item No.	Certificate of overassessment or claim number	Name and address of taxpayer	Net amount refundable	Amount credited	Not to be used by collector: Interest accrued	Not to be used by collector: Total refundable	Date of final payment of accounts from which credits were transferred and overpayments found	Not to be used by collector Refunding taxes illegally collected: 1925 and prior years	19 ..	19 .	Paid by disbursing clerk, Treasury Department, by checks dated Aug. 21, 1924 numbered as follows:	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
6	211358	Iron Cap Copper Co .	$28,850.83	$102,931.89		$28,850.83	12-17-19 .	$28,850.83			470668	

16c

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington.

Income-tax unit—C-22868.
IT:NR:F-1
LHR-2242.

Certificate of overassessment

Number: R-241355.
Allowed: $180,322.66
Schedule No. 9751.

IRON CAP COPPER COMPANY,
50 Congress Street, Boston, Massachusetts.

SIRS: An audit of your income-tax return, Form 1120, and a consideration of all the claims (if any) filed by you for the year 1918 indicates that the tax assessed for this year was in excess of the amount due:

Tax assessed $403,803	$183,099.78
" " May, 1921, list, page 111, line 3	48,539.94
Total	231,639.72
Corrected tax liability	51,317.06
Overassessed	180,322.66

For details of changes in your tax liability, see the attached statement.

jn-8.

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.
By S. ALEXANDER,
Head of Division.

Abated: $48,539.94.

Credited: $59.85, 1916a, May, '21, p. 111-1; $50,962.85, 1917a, May, '20, p. 39-9; $20,061.60, 1917a, May, '21, p. 111-2; $6,300.77, 1917a, June, '18, p. 137-6.

Refunded: $28,850.83.

Credited: $25,476.33, 1917a, Mar., '24, p. 1-1; $18.41, 1916a, Mar., '24, p. 1-0; $14.74, 1915a, Mar., '24, p. 0-9; $17.30, 1914a, Mar., '24, p. 0-8; $20.04, 1913a, Mar., '24, p. 0-7.

(7776-A) Revised July, 1923.

Record of assessments and payments

[Entries to be made by the collector according to instructions]

	Character of assessment and period covered	List	Year	Month	Account No. or		Amount assessed	Payments	
					Page	Line		Date paid	Amount paid
Original assessment.	Corp. Inc., 1918.	Annual.	1919	.....	403	803	$183,099.78	3-19-19 6-24-19 9-17-19 12-17-19	$50,000.00 41,549.89 46,000.00 45,549.89
									183,099.78
Additional assessment.	.....do.....	Add'l.	1921	May..	111	3	48,539.94	Alt. IT-A-9751.	

Tax was (was not) paid under "specific" (written) protest; no record.

If so paid, collector should attach such protest to this certificate.

The records of this office are as given above.

MALCOLM E. NICHOLS,
Collector of Internal Revenue.
By C. E. QUIGLEY, *Clerk.*

Date claim filed: 3-15-20; 7-20-20; 8-20, 1921.

17 IT:NR:F-1.
LHR-App.

Statement, Iron Cap Copper Company, 1918

You are advised that your application under section 327 for assessment of the war and excess profits tax as prescribed by section 328 of the revenue act of 1918 has been denied. Your statutory invested capital under section 326, as finally determined, is set out in detail below.

Net income shown by office letter of December 23, 1922		$289,625.13
Less:		
Depreciation of office letter December 23, 1922	$23,832.55	
Depreciation allowed	29,281.95	
		5,399.40
Balance of income for 1918		284,225.73
Less loss sustained in 1919		121,510.91
Net income subject to tax (1918)		162,714.82
Invested capital:		
Capital stock January 1, 1918		959,052.25
Surplus adjusted as at January 1, 1917	$235,986.89	
Add income, 1917	604,197.37	
Total	840,184.26	
Less adjustments shown in office letter of March 31, 1921, including dividends, income tax, etc	350,217.16	
		479,967.10
Total		1,439,019.35

18	Add:		
	Reserve for depletion office letter March 31, 1921	$180,838.93	
	Reserve for depletion corrected	179,295.17	
			$1,543.76
	Reserve for depreciation December 31, 1916, shown by office letter March 31, 1921	10,164.41	
	Reserve for depreciation corrected	3,335.51	
			6,828.90
	Total		1,[illegible]392.01
	Iron Cap Copper Company (brought forward)		1,447,392.01
	Less changes during the taxable year:		
	1917 income tax, $211,285.90 prorated for 200 days	$115,773.10	
	Dividends—		
	January 1, 1918	36.95	
	January 2, 1918, $72,405.00, prorated	72,206.63	
	February 1, 1918, $36,212.00, prorated	33,136.69	
	Stock purchased February 7, 1918, $22.00, prorated	19.76	
	Dividend March 1, 1918, $35,218.00, prorated	30,363.58	
	Dividends in excess of available income as shown by attached statement—		
	June 29, 1918	13,319.46	
	August 1, 1918	466.03	
	September 2, 1918	721.30	
19	October 1, 1918	1,353.04	
	November 1, 1918	541.46	
	December 2, 1918	266.29	
	Stock purchased July 1, 1918, $18,841.63, prorated	8,924.21	
	Total	277,128.50	
	Less stock sold December 5, 1918, $40,000.00 prorated	2,958.90	
			274,169.60
	Invested capital with inadmissibles included		1,173,222.41
	Product: Inadmissable (rate .031961)		37,484.46
	Invested capital adjusted		1,135,736.95
	Excess profits credit		93,858.36
	War profits credit		716,578.70
	Excess profits and war profits		36,912.99
	Less tax on income from gold exempt		171.04
	Balance of excess-profits and war-profits tax		36,741.86
	Iron Cap Copper Company (brought forward)		36,741.86
	Income tax:		
	Net income	$162,714.81	
	Less—		
	Interest from United States obligations not exempt	$2,512.92	
	War-profits and excess-profits tax	36,741.86	
	Exemption	2,000.00	
		41,254.78	
	Income taxable at 12%	121,460.04	
20	Income tax		14,575.20
	Total		51,317.06

Tax assessed on original return, account No. 40343	$183,099.78	
Tax assessed on May (1921) list, page 111, line 3	48,539.94	
		$231,639.72
Overassessment		180,322.66

IT: NIL: F-1
LHR-App.

Statement of dividends in excess of available income—Iron Cap Copper Company, Boston, Massachusetts

Nontaxable income		87,597.50
Taxable income corrected		284,225.73
Depletion on cost	$199,967.67	
Depletion on discovery	347,817.35	
		147,849.68
Total income available for dividends before taxes are deducted		439,672.91
Corrected tentative tax		49,780.78
Income available for dividends		389,892.13
Income available for one day		1,068.20
Income available April 1, 1918 (ninety-days)		96,138.00
Dividend paid April, 1918		36,218.75
Balance		59,919.25
21 Earnings April 1, 1918, to May 1, 1918		32,046.00
Total available May 1, 1918		91,965.25
Dividend paid May 1, 1918		36,224.75
Balance		55,740.50
Earnings May 1, 1918, to June 1, 1918		33,114.20
Earnings available June 1, 1918		88,854.70
Dividend paid June 1, 1918		36,224.75
Balance		52,629.95
Earnings from June 1, 1918, to June 29, 1918 (twenty-eight days)		29,909.60
Total income available June 29, 1918		82,539.55
Total income available June 29, 1918 (forwarded)		82,539.55
Dividend paid June 29, 1918		108,677.25
Dividend from capital June 29, 1918		26,137.70
Prorated for 186 days		13,319.46
Total net income		439,672.91
Less tentative tax, second computation		51,289.63
Income available for dividends		388,383.28
Income available for 1 day		1,064.06
Income available June 29, 1918, to August 1, 1918 (thirty-three days)		35,113.98
Dividend paid August 1, 1918		36,225.75
Dividend from capital August 1, 1918		1,111.77
22 Prorated for one hundred fifty-three days		466.03

Income August 1, 1918, to September 2, 1918 (thirty-two days)	$36,225.75
Dividend paid September 2, 1918	34,049.92
Dividend from capital September 2, 1918	2,175.83
Prorated for one hundred and twenty-one days	721.30
Income September 2, 1918, to October 1, 1918 (twenty-nine days)	30,857.74
Dividend paid October 1, 1918	36,225.75
Dividend from capital	5,368.01
Prorated for ninety-two days	1,353.04
Income October 1, 1918, to November 1, 1918 (thirty-one days)	32,985.86
Dividend paid November 1, 1918	36,225.75
Dividend from capital X	3,239.89
Prorated for sixty-one days	541.46
Income November 1, 1918, to December 2, 1918 (thirty-one days)	32,985.86
Dividend December 2, 1918	36,225.75
Dividend from capital	3,238.89
Prorated for thirty days	266.29

23 In United States District Court

Minute entry of hearing

On the said 29th day of March said cause is set down for hearing and fully heard by the court on the aforementioned agreed statement of facts, the Honorable James M. Morton, jr., district judge, sitting.

In United States District Court

Request for findings of fact and conclusions of law, filed Mar. 29, 1939

Findings of fact

The plaintiff and defendant having filed an agreed statement of facts, the defendant requests the court to find the facts therein set forth as facts in this case.

The defendant believing the evidence in the case to have established the following additional facts with reference to the progedure relating to the allowance of credits in the Bureau of Internal Revenue, requests the court to find:

1. Under procedure in effect prior to the adoption of the certificates of overassessment and schedules of overassessment, credits were allowed upon specific credit claims filed by taxpayer and when allowed were listed upon specific credit schedules to collectors and the allowed credits were applied or posted to taxpayer's accounts by collectors. The collectors did not return such old procedure schedules to the Commissioner of Internal Revenue or certify to him on subsidiary schedules that such credits had been made, allowed or posted as under the new or present procedure.

2. The Bureau of Internal Revenue has uniformly and consistently maintained that a credit is allowed when the commissioner signs the schedule of reductions of tax liability or schedule of overassessments, and every case in which interest has been allowed on credits by the Bureau of Internal Revenue has been adjusted on this basis.

24 3. General notice of the certificate of overassessment and schedule of overassessment procedure was given through the issuance by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury of Treasury Decision 3260, dated December 8, 1921.

4. The purpose of the new procedure was thus announced, for the more expeditious handling of claims, to provide for the refund or credit of overpayments where no claims were filed, to provide for more rapidly adjusting the volume of claims on hand and to reduce causes of delay to a minimum.

5. Another reason not specifically stated in the Treasury Decision was that the law, section 252 of the revenue act of 1918, provided that overpayments of income and profits taxes should be credited against the taxes then due and the balance immediately refunded. The old procedure frequently resulted in the payment of refunds to taxpayers who owed taxes for other years to which credits should be applied.

6. Under the new procedure a certificate of overassessment was issued for the amount overassessed which was allowed by the commissioner on schedule Form 7777, and which was by him transmitted to the collector of internal revenue with directions to abate or credit as disclosed by the status of the taxpayer's account. The collector was directed to check the allowed overassessment items against the taxpayer's accounts and to make appropriate entries indicating the application by him by credit, and if any amounts were to be refunded to prepare a schedule of refunds.

7. This schedule of refunds was designated by the Commissioner of Internal Revenue as a subsidiary schedule and related solely to refunds.

25 8. Upon application of the amounts of overassessments as abatements or credits, the collectors forwarded the certificates of overassessments to the taxpayers, but in a case in which any amount of overpayment was to be refunded the collector was not to forward the certificates to the taxpayer but to return them with a schedule of refundable amounts to the commissioner for enclosure with a check to the taxpayers drawn by the disbursing clerk. The purpose of the return of the certificates involving refunds was to avoid the preparation of additional letters of transmittal for checks and that the certificates might complete the transaction by advising the taxpayer as to the overpayment, state the reason therefor and accompany the check in payment of the refund indicated.

9. The schedule of refunds related to refund and interest items only—payments to be made from the Treasury, and had no relation

to amounts credited, nor to the allowance or approval thereof, which were not originally listed thereon for any purpose.

10. The certificate of overassessment procedure was put into actual operation as soon as possible after December 16, 1921, the first schedule having been issued on February 2, 1922. It was then impossible to comply at the time of adjusting the schedules of overassessment with the requirement of section 1324 (a) of the revenue act of 1921 to allow interest on allowed refund or credit claims. Accordingly collectors were directed to return the original certificate of overassessment with Form 7777 (a) in all cases where the refund or credit, or both, amounted to $5,000 or more. This was for the purpose that the check, if any, for interest on the overpayment which was credited might accompany the same to the taxpayer.

11. Forms 7777 and 7777 (a) were subsequently modified to more conveniently effect payment of refunds and interest on credits and refunds and became Forms 7805 and 7805 (a).

26 12. Where the subsidiary schedule prepared by the collector disclosed no refundable items, the only purpose for which the commissioner signed the schedule of refunds was to allow interest, if any, on items which had been credited. In the event there were neither refunds nor interest on credits to be paid, the commissioner's signature did not then appear on the refund schedule.

Conclusions of law

And I find as conclusions of law:

1. That the sum of $102,931.89 of the total overassessment of $180,322.66 for the year 1918 credited against taxes due for other years was allowed as a credit by the Commissioner of Internal Revenue on March 29, 1924.

2. That the defendant is entitled to judgment dismissing plaintiff's petition and for costs and disbursements of this action.

By his attorneys.

FREDERICK H. TARR,
United States Attorney.
By J. DUKE SMITH,
Special Asst. to the United States Attorney.

Said cause is thence taken under advisement, when, to wit, April 3, 1929, an opinion of the court is announced.

27 In United States District Court

Special findings of fact

Filed June 24, 1929

In addition to the statements of fact in the opinion rendered by me on April 3, 1929, I find the facts as set forth in the agreed statement of facts filed herein. I also make the following findings of

fact. Evidence of previous practice of the commissioner's office was admitted over the objection of the petitioner on the ground that it was immaterial.

Prior to the adoption of the certificate of overassessment procedure on February 2, 1922, no allowance of overassessments was made except upon claims filed by taxpayers either for credit, abatement or refund. If a credit claim was filed and allowed in whole or in part, it was listed on a credit schedule containing credits only, signed by the Commissioner of Internal Revenue and sent to the appropriate collector. The same procedure applied to abatements.

The allowance of credit items on credit schedules by the commissioner was considered final and no additional report was made by the collector to the commissioner subsequent to their allowance by the commissioner.

Claims for refund were not scheduled to the collector. When allowed in whole or in part they were listed on specific refund schedules and transmitted directly to the proper officials of the Treasury Department for the issuance of checks. The result was that it frequently happened that refunds would be allowed and paid while there were outstanding unpaid taxes due from the taxpayer to the Government for other years. To meet this situation, the certificate of overassessment procedure was adopted. It became effective on February 2, 1922. A certificate of overassessment is an allowance document indicating the amount of taxes assessed for a specific year, stating the tax liability and indicating the difference as an overassessment.

28 When certificates of overassessment were issued in regular course they were listed on schedules at that time called "schedules of reduction of tax liability and allowance of claims" and submitted to the commissioner for allowance in groups instead of individually and in order to provide means of referring them to the collectors for proper adjustments. The original form number of these schedules was Form 7777.

After the schedule was signed by the commissioner the original and several copies, together with the original and several copies of each certificate of overassessment listed thereon, were forwarded to the respective collectors of internal revenue with the directions appearing on the schedules, which is as follows:

"Authorization of commissioner

"*To the Collector* ---------- *District:*

"The several amounts herein noted as reduction of tax liability are hereby approved and allowed.

"You will immediately check the items herein against the accounts of the several taxpayers and determine whether the several amounts in which the tax liability has been reduced should be abated in whole or in part and make such abatement as may be warranted by the condition of the taxpayer's account for the year involved.

"If any part of the tax is found to be an overpayment, you will examine all accounts of the taxpayer for subsequent periods and apply such overpayment as a credit against the tax owing (if any) on the taxpayer's account for subsequent periods. (This applies to income, war profits, and excess profits taxes only.)

"The balance (if any) of the overpayment shall be entered in column 12 and placed upon a schedule of refunds (Form 7777–A) and an appropriate memorandum made upon the taxpayer's
29 account. "You will thereupon complete and certify this schedule and Schedule 7777–A and return three copies of each to the Commissioner of Internal Revenue at Washington, making the appropriate entries in your accounts.

Date_____

_____,
Commissioner of Internal Revenue."

The collectors complied with the instructions to first refer to the accounts involved to determine what, if any, portion should be abated as outstanding and not due as indicated by the certificate and to ascertain from the taxpayer's account what amount, if any, had actually been overpaid; if the accounts disclosed in overpayment, then to examine the taxpayer's accounts for other years and to apply any overpayment or so much as might be necessary to the outstanding balance for the other years. After having complied with the commissioner's instructions, the collector certified to the Commissioner of Internal Revenue as follows:

"Certificate of collector

"*To the Commissioner of Internal Revenue:*

"The items in this schedule have been checked against the accounts of the respective taxpayer concerned and the amounts indicated have been applied as abatements and credits on their accounts.

"The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date_____

_____,
Collector _____ District."

30 If any portion of the overassessment appeared as refundable, the instructions were to prepare a subsidiary schedule entitled "Schedule of Refunds" on Form 7777–A and return the same to the commissioner. With reference to these items, the certification of the collector was as follows:

"Certificate of collector

"*To the Commissioner of Internal Revenue:*

"The items herein listed have been checked against the accounts of the several taxpayers concerned, and the amounts of overpayment to

be refunded by disbursement checks have been found to be as indicated herein.

Date----------

Collector ---------- District."

Upon the receipt by the commissioner of the schedules, the deputy commissioner examined the items appearing on the subsidiary schedule and then certified to the commissioner as follows:

"Certificate of deputy commissioner

"*Commissioner of Internal Revenue:*

"The items herein listed have been examined and the amounts of overpayment to be refunded by disbursement checks as indicated herein have been found due.

Date----------

Deputy Commissioner."

31 The authorization of the commissioner to the disbursing clerk to pay the refundable items is as follows:

"Authorization of commissioner

"*To the disbursing clerk, Treasury Department:*

"The several amounts herein listed as refundable are hereby authorized and allowed.

Date ----------

Commissioner of Internal Revenue."

If the entire amount of the overassessment was either abated or credited, the collector was under instructions to mail the original certificate of overassessment to the taxpayer. If it appeared that any amount was to be refunded, his instructions were to return the original certificate of overassessment to the bureau, with copies of the schedules of overassessments and the original schedule of refunds."

The revenue act of 1921 became effective November 23, 1921. This act for the first time provided for the payment of interest on refunds and credits, if such refunds or credits were allowed on claims filed by the taxpayer. It followed that many credits were allowed without claims and interest was not paid. In other cases claims for credit were allowed on which interest should be paid. The procedure in effect was not complete inasmuch as there had been no instructions to collectors to list credit items on the subsidiary schedules. The subsidiary schedule had been prepared merely to effect payment of refund items. Collectors were accordingly instructed in any case in which any portion of an overassessment was to be either refunded

or credited to return the original certificates of overassessment and to include the list of credit items on the subsidiary schedule.

32 No provision having been made on the subsidiary schedule for a column showing items credited, it was necessary to type the credit items. In order to avoid typing and in order that there might be a complete form on which the commissioner might certify for payment not only refunds but interest on credits and refunds where interest was allowed, the schedule forms were revised and reissued as Forms 7805, 7805–A, and 7809.

Form 7805 replaced Form 7777 and Form 7805–A replaced Form 7777–A. The new Form 7805–A was entitled "Schedule of Refunds and Credits," and an additional printed column was added to the form entitled "Amount Credited." Form 7809, schedule of refunds, was intended for refunds only which were not schedule to collectors and which had not previously been allowed on schedules of overassessment. Forms 7805 and 7805–A are the forms which were in use at the time of the allowances of the credits in question in this case. The practice as to signing the schedules by the commissioner and the action of the commissioner upon the receipt of the schedules from the collector was the same as had existed while Forms 7777 and 7777–A were in use.

The instruction of the commissioner to collectors on Form 7805 was as follows:

"Authorization of commissioner

"*To the collector* _____ *District of* _____

"The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the 'Certificates of Overassessment' or 'Notices of Adjustment of Refund' attached thereto.

"You will immediately check such items against the account

33 of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated, in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

"If any part of any such item is found to be an overpayment, if you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts. (This applies only to income, war-profits, and excess-profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary schedule of refunds and credits (Form 7805–A).

"The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805–A), referred to above, and an appropriate memorandum made upon the taxpayer's account.

"You will thereupon complete and certify this schedule and the schedule upon Form 7805–A, and return the necessary copies of each to the Commissioner of Internal Revenue.

Date _____

_____,
Commissioner of Internal Revenue."

The certificate of the collector on Form 7805 was as follows:

"Certificate of collector

"*To the Commissioner of Internal Revenue:*

"The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

"The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date _____

_____,
Collector _____, District of _____."

The certificate of the collector on the subsidiary schedule, Form 7805–A, was as follows, and the certificate of the deputy commissioner to the commissioner also follows:

"Certificate of collector

"*To the Commissioner of Internal Revenue:*

"The items hereon are relisted as they appeared for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit.

Date _____

_____,
Collector _____, District of _____."

"Certificate of deputy commissioner

"*Commissioner of Internal Revenue:*

"The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due.

Date _____

_____,
Deputy Commissioner."

35 Forms 7805 and 7805–A were returned from the collector for the purpose of checking the adjustments made by the collector. In other words, to see that the collector had not disposed of or applied an amount in excess of the amount overassessed or on the contrary that he had applied the entire amount: and, secondly, in order that the interest on the refunds and credits might be determined, as shown in the proper column on the schedule, and added to the amount of the refund, showing the total amount for which checks should be issued by the disbursing clerk.

In the event that Schedule 7805–A disclosed no refundable items of tax and no interest allowable on credits which had been allowed, the instructions were to mark the original schedule of refunds and credits as cancelled, place it in a special loose-leaf binder for reference, if necessary, to likewise mark the bureau record copy as cancelled, indicate where the original was on file and file the bureau record copy in its proper place, according to the serial number. In these cases, no certificate was signed by the Commissioner of Internal Revenue.

The only comparison which may be made by the commissioner of the schedule of refunds and credits returned by the collector with the schedule of overassessments is to check the figures submitted by the collector for the purpose of determining whether or not he has applied more for abatement, credit, and refund than is shown by the amount of overassessment.

No other action was taken by the commissioner with reference to credits other than what appears on the schedule of overassessments on Form 7805 and with reference to interest on credits that appears on Form 7805–A.

The instructions to the collector were to prepare the subsidiary schedule only in the event that refunds were to be paid as indicated by the schedule. Form 7805–A became a voucher for the dis-
36 bursing clerk. It indicated to the disbursing clerk the names of the taxpayers to whom checks should be drawn and the amount of each check. It served as a voucher supporting payments by the disbursing clerk from the appropriation for paying refunds illegally collected.

Forms 7805, 7805–A, and 7809 have been superseded by the schedule of overassessments, Form 7920, at present in use, which has been in use since January 1927. The certificate of the deputy commissioner to the commissioner is as follows:

"Certificate of deputy commissioner

"*To the Commissioner of Internal Revenue:*

"The tax liability of the respective taxpayers herein listed has been determined in accordance with available facts and the law. The overassessments or reductions of tax liability indicated in column

3, or amounts refundable listed in column 7, are accordingly recommended for allowance.

Date ----------

Deputy Commissioner."

The authorization of the commissioner both to the collector and to the disbursing clerk is as follows:

"Authorization of commissioner

"This schedule must be adjusted and all required steps taken IMMEDIATELY.

"The amounts listed in column 3 as overassessments (or reductions of tax liability) are hereby approved and allowed in the respective amounts indicated, if any.

"The COLLECTOR will immediately check such items against
37 the accounts of the taxpayers and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated in whole or in part and make such abatements as may be warranted by the condition of the taxpayer's accounts for the years involved. If any part of any such item is found to be an overpayment, the collector will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against income, war profits, or excess profits taxes due, if any, making the appropriate entries in his accounts. The amounts credited will be entered by the collector in column 6. The balance, if any, of the overpayment refundable will be entered in column 7 and an appropriate MEMORANDUM made upon the taxpayer's account showing the refund and the amount refunded. The collector will thereupon complete and certify this schedule and return the same, with the necessary copies, to the Commissioner of Internal Revenue.

"The DEPUTY COMMISSIONER of Internal Revenue will compute the interest payable, list the same in column 8, and enter the respective total amounts payable in column 9 or 10, or both.

"The DISBURSING CLERK, Treasury Department, is authorized to pay the amounts specified in column 9 or 10, or both.

Date ----------

Commissioner of Internal Revenue."

The certificate of the collector is as follows:

"Certificate of collector

"*To the Commissioner of Internal Revenue:*

"The items on this schedule have been checked against the
38 accounts of the respective taxpayers concerned. Abatements and credits in their accounts have been applied in the amounts

indicated, and net amounts refundable have been determined as shown in column 7.

Date _____

_____

Collector _____ *District of* _____."

This procedure dispenses entirely with the subsidiary schedule or any signature by the commissioner or deputy commissioner following the certification by the collector. The collector, as previously, on Form 7920 signs a certificate including the statement "Abatements and credits in their accounts have been applied in the amounts indicated, and net amounts refundable have been determined, as shown in column 7." This appears on the original schedule and not on the subsidiary schedule.

In the early practice, before the commissioner could prepare a schedule of credits or a schedule of refunds or a schedule of abatements, he had to have information from the collector's office as to what taxes were due and how much the taxpayer had paid. Before the commissioner issued a schedule of credits the commissioner had to know how much the taxpayer had overpaid on the year in question. An overpayment would not be allowed to be credited without evidence of the actual overpayment. The allowance of an overassessment was in the nature of a sort of half-litigated question. The determination was in the nature of a judgment which was sent to the collector to make the proper financial adjustment upon it. If credits were to be allowed (and they were allowed only on the basis of claims for credit filed by the taxpayer) the instructions to the collector so indicated and the collector then made the adjustment.

Under the procedure which was in effect in 1924 when the present case was considered the commissioner did not know
39 the status of the account of the taxpayer. He did not have in his office in Washington the necessary information to allocate the amount of overassessment as between amount to be abated, amount to be credited, and amount to be refunded. The record in this case indicated that there was an outstanding balance and that some credit should be made if there was an overpayment. In the usual case the commissioner does not know the status of the taxpayer's account. He does not ordinarily even know whether there has been an overpayment, and he probably did not know in this case. Ordinarily the amount to be abated, the amount to be credited, and the amount to be refunded are determined for the first time in the collector's office after he has received the schedule of overassessments and has had the accounts of the taxpayer examined. There is nothing to indicate that this was not true in the present case. The actual entry in the accounts showing application of the credit on the outstanding tax is made in the collector's office because the accounts are maintained there. The Washington office

does not have a copy of the accounts. When the collector has segregated and determined how much the overassessment is to be abated and how much credited, he makes the application and certifies to the commissioner on the schedule of overassessments that he has done so. This is the certificate which in the present case is dated July 14, 1924. (See agreed statement of facts, Paragraph XIII, Exhibit 3.) He also sends to the commissioner the subsidiary schedule of refunds and credits. This also was signed by the collector under date of July 14, 1924. (Agreed statement of facts—Ibid.) When the subsidiary schedule reaches Washington and figures are checked to see that the three figures together add up to the amount of the overassessment, the commissioner signs the authorization to the disbursing clerk to issue checks covering the payments listed on the subsidiary schedule.

40 Under the regular procedure there is no other communication, authorization, or instruction from the commissioner to the collector with reference to the overassessments except what is contained on the schedule of overassessments. This was true in the present case.

After the allowance of the overassessment there remains just routine matter in applying the overassessment to the status of the taxpayer's account. The law requires an overpayment to be credited to outstanding taxes. The commissioner's instruction to the collector on the schedule of overassessments is that he shall apply the overassessment to the taxpayer's account.

There is no record of the actual date of application of the credit on the collector's books. The official application of a credit by the collector is the date on which he signs the subsidiary schedule. This date in the present case was July 14, 1924.

It appeared, also subject to the objection of the petitioner, that the bureau has uniformly held that the date of the allowance of a credit is the date upon which the commissioner signs the schedule of overassessments and that all interest adjustments, so far as made voluntarily by the bureau, have been made under this rule.

Statements of fact in the opinion herein are to be considered as part of these special findings.

JAMES M. MORTON, JR.,
District Judge.

On the said 24th day of June, a bill of exceptions is filed by the defendant and allowed by the court.

41 In United States District Court

Agreement for judgment

Filed June 24, 1929

It is hereby agreed that judgment may be entered for the petitioner in the amount of $11,592.18.

TYLER, EAMES, WRIGHT & HOOPER,
BURTON E. EAMES,
Attorney for Petitioner.
FREDERICK H. TARR,
United States Attorney,
By J. DUKE SMITH,
Special Asst. to the U. S. Atty.,
Attorneys for Defendant.

In United States District Court

Judgment

Thereupon, to wit, June 24, 1929, it is considered by the court, on the findings of the court, the Honorable James M. Morton, jr. district judge, sitting, that the Iron Cap Copper Company, petitioner, recover of the said United States, respondent, the sum of eleven thousand five hundred ninety-two dollars and eighteen cents ($11,592.18).

In United States District Court

Defendant's bill of exceptions

Filed and allowed June 24, 1929

This is a petition by the Iron Cap Copper Company against the United States of America for the recovery of interest on certain credits against an overassessment of income and profits taxes for the year 1918, said overassessment being in the amount of $180,322.66. The pleadings are a part of this record and may be referred to as a part of this bill of exceptions. The case was tried before Morton J., without a jury upon an agreed statement of facts and additional oral testimony. The court made special findings of fact. The
42 agreed statement of facts and the special findings of fact are by reference incorporated into and made a part of this bill of exceptions.

The above are all the material facts in the case. At the trial the defendant filed a motion for judgment and requested the court to find as a matter of law as follows:

"1. That the sum of $102,931.89 of the total overassessment of $180,322.66 for the year 1918 credited against taxes due for other

years was allowed as a credit by the Commissioner of Internal Revenue on March 29, 1924."

The court, in an opinion handed down on April 3, 1929, which is made part hereof, held that the credit was not allowed when the certificate of overassessment was signed by the commissioner but when he signed the subsidiary schedule, and ordered judgment for the petitioner.

The defendant being aggrieved by the ruling of the court as hereinbefore set forth and its refusal to grant the defendant's request for findings of law, now excepts to said rulings and brings this bill of exceptions and prays that it may be allowed.

By its attorneys,

FREDERICK H. TARR,
United States Attorney.
By J. DUKE SMITH,
Special Asst. to the United States Attorney.

The foregoing bill of exceptions may be allowed.

TYLER, EAMES, WRIGHT & HOOPER,
BURTON E. EAMES,
Attorney for Petitioner.

The foregoing bill of exceptions is allowed this 24th day of June, 1929.

JAMES M. MORTON, Jr., *D. J.*

43 In United States District Court

Memorandum re Defendant's Exhibit 1

[MEMORANDUM. Copy of Treasury Department Form 7920, schedule of overassessments, is here omitted by agreement of counsel, the original to be transmitted with this Transcript of Record. JAMES S. ALLEN, *Clerk.*]

Defendant's Exhibit 2

3463 Law. Deft.'s Ex. 2, J. E. G., jr., 3/29/29

(T. D. 3260)

Refund, credit, and abatement adjustments

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

To Collectors of Internal Revenue and others Concerned:

For the more expeditious handling of refund, credit, and abatement claims, and to provide for the refund or credit of overpayments of revenues where no claims have been filed, the following procedure is established to become effective December 16, 1921:

1. Reduction of internal revenue assessments and adjustments of overpayments of revenues will hereafter be accomplished in one of three ways:

(a) On the basis of an application submitted by a taxpayer on Form 46, 47 or 47A, together with appropriate supporting evidence to be filed in the office of the collector of internal revenue of the district in which the tax is assessed.

(b) On the basis of a certificate of overassessment prepared by the appropriate administrative unit in the bureau in each case in which an overassessment of tax is disclosed through the audit of a return.

(c) On the basis of a blanket claim (Form 751); a schedule of taxes found to be uncollectible (Form 53); or a schedule of duplicate payments and overpayments due to obvious error on all forms of taxable returns (blanket Form 47 or 47B) submitted by a collector of internal revenue. Form 751 will be used only in cases where credit balances exist, regardless of the class of return filed.

2. Claims of taxpayers and the items of collector's blanket claims (if and when found by an administrative unit to be allowable), and certificates of overassessment (upon final approval), and items credited in account 9 (e) shall be scheduled on Form 7777 and submitted to the Commissioner of Internal Revenue for approval. Upon approval by the commissioner, such schedules shall be forwarded to the collectors of internal revenue of the several districts.

3. Upon receipt of such schedules the several collectors of internal revenue shall immediately check the items thereon against the accounts of the several taxpayers concerned and determine whether the several amounts of overassessments should be abated, refunded, or credited against assessments remaining unpaid. Only overpayments of income and profits taxes may be credited against unpaid assessments of such taxes (section 252 of the revenue act of 1921). Whenever, on such examination of a taxpayer's account and of the items in account 9 (e), a collector finds an amount of overpayment, he shall examine all accounts of the taxpayer for subsequent periods and determine and certify the amount, if any, of such overpayment that shall be credited against the taxpayer's account for any subsequent year or years and the amount of such overpayment for which a disbursement check should be issued. He shall thereupon make appropriate entries upon all copies of the schedules and upon the assessment list, indicating the application made by him of the several amounts of overassessment and overpayment (whether by abatement or by credit), and the amounts to be refunded; summarize the amounts applied in abatement, the amounts of overpayment and of credit; certify all copies of the schedule; retain one copy and forward the others to the Commissioner of Internal Revenue at Washington.

4. The collector shall at the same time prepare (in quadruplicate) on Form 7777A a schedule of net refundable amounts for which dis-

bursement checks are to be issued; retain one copy of the schedule for his record; certify the other three copies and forward them together with the copies of the schedules on Form 7777 to the Commissioner of Internal Revenue at Washington.

5. Upon application of the several amounts of overassessment and overpayment as abatements or credits, and the determination of the amounts to be refunded, the collector of internal revenue shall make the appropriate entries upon the certificates of overassessment which will be forwarded to him with the schedules; and transmit appropriate copies of such certificates to the several taxpayers as notification of the action taken by the collector in the way of abatement or credit; provided, however, that in those cases in which any amount of overpayment is to be refunded, the collector shall not send the certificate of overassessment to the taxpayer, but shall make the appropriate entries thereon and forward such certificates of overassessment with the schedule of refundable amounts to the Commissioner of Internal Revenue at Washington.

46 6. Upon completion and certification of a schedule, the collector of internal revenue shall credit the accounts with the amounts abated and credited and make proper notations of the refunds. The proper account 6 will be credited, and account 18 will be debited with the total amount abated and applied as credits for the reduction of tax liability. Account 9 (e) will be debited with the total amount applied as credits from items in account 9 (e). The procedure as outlined in section 583 of the Internal Revenue Manual, in cases of this nature, should be carefully followed.

7. Upon receipt of properly certified copies of Form 7777 and 7777A the commissioner shall cause to be made the necessary entries in the control accounts of the Bureau of Internal Revenue, and the necessary allowance documents prepared. Upon receipt of these schedules the accounts unit of the Bureau of Internal Revenue shall retain one copy of Form 7777 for its records and forward a copy to the General Accounting Office of the Comptroller General as a voucher for the collection accounts of the collector. He shall retain one copy of the schedule of refunds Form 7777A for his records; make the necessary entries upon and forward two copies with the allowance documents to the commissioner for his approval.

8. Upon approval of schedules of refunds Form 7777A the commissioner will forward such schedules with the allowance documents to the disbursing clerk of the Treasury Department.

9. Upon receipt of properly approved schedules and allowance documents, the disbursing clerk shall prepare disbursement checks in the amounts of the several net refundable items in favor of the respective taxpayers against whose accounts net refundable amounts shall have been allowed by the commissioner; forward such

47 checks, together with the certificates of overassessment (which will be transmitted to him) to the respective taxpayers; retain one copy of this schedule for his record; and transmit the other copy

to the General Accounting Office of the Comptroller General as a voucher for his disbursement account.

D. H. BLAIR,
Commissioner of Internal Revenue.

Approved December 8, 1921.
A. W. MELLON,
Secretary of the Treasury.

In United States District Court

Opinion

April 3, 1929

MORTON, J. This is an action to recover interest on a credit allowed by the Government against certain additional income taxes assessed against the plaintiff. The case turns on when the credit was allowed. The Government says on 29 March, 1924; the plaintiff on either 14 July, 1924, or 7 August, 1924. Between the first and the second of these dates the revenue act of 1924 had gone into force, on 2 June, 1924, superseding the act of 1921. If the allowance was made during the earlier act the plaintiff is not entitled to interest on the credit; if made during the act of 1924, it is entitled to it.

Under both acts questions of overassessment were determined in the bureau at Washington, while the individual accounts with the taxpayers were kept at the offices of the district collectors. When a decision was made by the commissioner in favor of a taxpayer, i. e., that there had been an overassessment, this determination was entered on an overassessment sheet which was sent to the collector of the proper district, with instructions to adjust the matter with the taxpayer, either by an abatement of the taxes complained of,
48 or by a credit on taxes outstanding, or by a refund of the amount illegally collected. The collector upon receipt of this action by the bureau proceeded to make the requisite adjustment of the taxpayer's account. In the present case it involved a substantial credit, amounting to over $100,000.00, interest on which forms the subject matter of the present action. After making the proper adjustment of the taxpayer's account the collector forwards to the commissioner a schedule showing what has been done. The collector's action as to a credit is final; but if payments of any kind are called for, the commissioner on receiving the schedule from the collector has the figures checked, and thereupon makes a "subsidiary schedule," which the commissioner signs and which is directed to the disbursing clerk. In effect it amounts to an order for the payment of the money. No allowances of interest are ever made by the collector. Interest on credits is dealt with only at the bureau in Washington and it is always paid like a refund, i. e., it goes on a subsidiary schedule which is approved by the commissioner.

The contention of the Government is that the action by the commissioner, in deciding that there had been an overassessment was in

law the allowance of the credit; that therefore the allowance was made during the act of 1921; and that therefore interest upon the credit is not recoverable. The difficulty with this argument is that it ignores the decision of the Supreme Court of the United States in Girard Trust Company in 270 U. S. 163, and of this court in Boston Buick Company vs. United States in 27 F. 2, 395. In the first of these cases it was decided, as to refunds, under the act of 1921, which on the point under discussion is substantially the same as the act of 1924, that the effective date was that on which the commissioner signed the subsidiary schedule; that said schedule constituted the order for the payment of the money; and that up to that time
49 the taxpayer's right to recover had not become fixed. In the Boston Buick case Judge Brewster held that the same principle applied to interest on a credit. The practice of the department, treating the commissioner's decision that there had been an overassessment as the allowance of a refund, was expressly disapproved in the Girard Trust Company case, supra, p. 170. The plaintiff's right to recover interest does not become fixed until it is included in a subsidiary schedule signed by the commissioner—exactly like money paid on refunds. If the commissioner's action in signing the subsidiary schedule is the decisive step as to one, it seems to me to be equally the decisive step as to the other.

Judgment for the plaintiff in United States District Court

Defendant's petition for appeal and order allowing same

Filed June 27, 1929

United States of America, defendant, appellant herein, feeling aggrieved by the order and judgment made and entered in this court on the twenty-fourth day of June, 1929, in favor of the plaintiff and against the defendant, hereby appeals from said order and judgment to the United States Circuit Court of Appeals for the First Circuit for the reasons set forth in the assignment of errors filed herewith.

Wherefore your petitioner prays that the appeal be allowed and citation issued as provided by law, and that a transcript of the record, proceedings, and all other papers on which said judgment and order were based, duly authenticated, be sent to the United States Circuit Court of Appeals for the First Circuit under the rules of said court and in accordance with the law in such case made and provided.

FREDERICK H. TARR,
United States Attorney,
By J. DUKE SMITH,
Special Asst. to the U. S. Atty.

Petition for appeal allowed.

JAMES A. LOWELL, *U. S. D. J.*

JUNE 27, 1929.

50–51 In United States District Court

Defendant's assignment of errors

The defendant in this action in connection with its petition for appeal makes the following assignment of errors which it avers occurred in the trial of the case, to wit:

1. The court erred in ruling that the credit was allowed when the Commissioner of Internal Revenue signed the authorization to the disbursing clerk, Treasury Department, appearing on schedule of refunds and credits, Form 7805–A, to pay refundable items and accrued interest.

2. The court erred in refusing to rule that the credit was allowed when the Commissioner of Internal Revenue signed the authorization of the commissioner to the collector of internal revenue appearing on schedule of overassessments, Form 7805.

3. The court erred in ruling that the petitioner was entitled to recover.

Wherefore the defendant prays that the judgment of the district court be reversed.

By its attorneys,

FREDERICK H. TARR,
United States Attorney,
By J. DUKE SMITH,
Special Asst. to the U. S. Atty.

[Citation in usual form showing service on Burton E. Eames omitted in printing.]

52 [Clerk's certificate to foregoing transcript omitted in printing.]

53–54 *Minute entry of argument and submission, October 3 and 4, 1929, omitted in printing*

In United States Circuit Court of Appeals, First Circuit

Judgment

November 5, 1929

This cause came on to be heard October 3 and 4, 1929, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel:

Upon consideration whereof, It is now, to wit, November 5, 1929, here ordered, adjudged, and decreed as follows: The judgment of the district court is affirmed.

By the court,

[SEAL.] ARTHUR I. CHARRON, *Clerk.*

55 In United States Circuit Court of Appeals, First Circuit

October Term, 1929

No. 2344

UNITED STATES OF AMERICA, RESPONDENT, APPELLANT

v.

BOSTON BUICK COMPANY, PETITIONER, APPELLEE

No. 2377

SAME v. IRON CAP COPPER COMPANY

Appeals from District Court of the United States for the District of Massachusetts

Before ANDERSON, WILSON, and HALE, JJ.

(35 Fed. 2d 560)

Opinion filed November 5, 1929

WILSON, J. These two cases are before this court on appeal by the United States from decisions of the District Court of Massachusetts. As the same question is involved in both cases and they were argued together, one opinion will suffice to dispose of them.

The material facts in the Iron Cap Copper Company creating the issue here raised are as follows:

An examination and audit of the tax returns of the appellee for the year 1918 disclosed that the appellee had been overassessed in that year to the amount of $180,322.66. On March 29, 1924, the commissioner approved a schedule of overassessments con-
56 taining a list of taxpayers who had been overassessed for the year 1918, in which was included the overassessment of the appellee in the above amount.

The schedule was made out on a form then in use in the department and known as Form 7805, which was forwarded to the collector of internal revenue at Boston with the following general instructions which were printed thereon:

"You will immediately check such items against the accounts of the several taxpayers and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

"If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against taxes due, if any"; and with further instructions to enter such credits and any balance in

appropriate columns of the schedule of overassessments and in a subsidiary schedule then in use and designated as Form 7805A, and return both forms to the commissioner's office.

After the collector had conformed to these instructions, it was found that the status of the taxpayer's account required an abatement to the amount of $48,539.94, and that there had been an overpayment by the appellee of $131,782.72. He therefore credited against taxes previously assessed against the taxpayer and unpaid, the sum of $102,931.89, which left a balance to be refunded to the taxpayer of $28,850.83. In accordance with above directions of the commissioner, he so reported to the commissioner on July 14, 1924, on Form 7805A, and on August 7, 1924, the deputy commissioner reported to the commissioner that the amount reported by the collector as refundable had been found correct, and together with the accrued interest set forth in the subsidiary schedule on Form 7805A was due the taxpayer. Whereupon the commissioner authorized the disbursing clerk in the Treasury Department to pay the refundable amount to the plaintiff.

57 In the Boston Buick Company case the material facts are as follows:

On the fourteenth day of March, 1924, the commissioner, on Form 7805, certified to the collector at Boston that the plaintiff had been overassessed for the year 1918 to the amount of $23,881.08. The collector, following the general directions contained in Form 7805, reported back July 11th, 1924, that there had been an overpayment by this taxpayer equalling the total amount of the overassessment, which he credited on other taxes due from the taxpayer. On July 31 the deputy commissioner and the commissioner signed the usual blanks contained in Form 7805A directing the payment of any sum disclosed by the reports of the collector as refundable.

Interest in the Iron Cap Copper Company case was allowed and paid on the amount refunded in accordance with the decision of the Supreme Court in the case of Girard Trust Company v. United States, 270 U. S. 163, but no interest was allowed on the sums credited on other taxes due from the taxpayer, either in the Iron Cap Copper Company or the Boston Buick Company. These actions are respectively brought to recover interest on the credits which the plaintiffs say should be computed under section 1019 of the revenue act of 1924, the relevant part of which reads as follows:

Sec. 1019. "Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected * * * interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum," etc.

The issue in both cases is whether the credits were allowed when the commissioner on March 14 and on March 29, 1924, certified to the collector on Form 7805 that there had been an overassessment and directed him to determine what, if any, part of the taxpayer's assessment should be abated, and if there was an overpayment what,

if any, part should be credited to other payments due from the taxpayer; or whether the credits were allowed when the collector made his report of the status of the taxpayer's account and the
58 abatements and credits allowed by him, and the commissioner, expressly or impliedly, approved his report.

The date of the allowance of the credits is the crux of both cases, since if the allowance of the credits within the meaning of the revenue acts was made when the commissioner certified to the collector the amount of the overassessments on March 14 and March 29, 1924, interest on credits must be computed under section 1324 of the revenue act of 1921, under which it is agreed by the taxpayer that no further interest should be allowed; but if the credits were not allowed until the collector had examined his accounts and determined the amount of the overpayment, if any, and the amounts then due from the taxpayer for other periods, which it is agreed was on July 11, 1924, in the Boston Buick case, and on July 14th in the Iron Cap Copper Company case, or until he had made his report to the commissioner, and it had expressly or impliedly received his approval on July 31, 1924, in the Boston Buick Company case, and on August 7th in the Copper Company case, then it is admitted by the Government that under the decisions of the Supreme Court, Blair v. United States ex rel. Birkenstock et al., 271 U. S. 348; United States v. Magnolia Petroleum Co., 276 U. S. 160, interest should be computed under section 1019 of the revenue act of 1924, which became effective June 2, 1924, and that under section 1019 there would be due the plaintiff, Iron Cap Copper Company, as interest, the sum of $11,592.18, and to the Boston Buick Company the sum of $6,675.83.

The court below found for the plaintiff in each case, and in the above amounts. This court is of the opinion that the contention of the plaintiffs must be sustained and the appeals dismissed.

Prior to the revenue act of 1926 there is nothing on which to base the contention of the Government that the allowance of an overassessment is an allowance of credits, except a regulation of the Treasury Department and its persistent practice in so holding.

The commissioner, who is the final arbiter in such matters, when he determines that there has been an overassessment, has no knowledge of what the status of any taxpayer's account is,
59 whether it will disclose that there has been an overpayment, and, if so, whether there will be any sums due from the taxpayer for other periods to which the overpayments should be credited, or whether the overpayment must all be refunded. While Form 7805, containing the schedule of overassessments, contains a direction to the collector if any overpayment is found, to apply first to other taxes which may be then due from the taxpayer for other periods and enter any balance in appropriate columns in Form 7805 and 7805A as refundable, yet the action of the collector is not final.

The Supreme Court in Girard Trust Co. v. United States, speaking through its Chief Justice, said:

"The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and a refund or credit should be granted, and when he has made that decision finally, he has allowed the claim for the refund or credit of the taxes paid within the meaning of the section."

Again:

"The findings and the exhibits show that the course of business is that the collector on receiving from the commissioner the schedule as to the overassessment, examines his books and reports back to the bureau the amount which should be credited on taxes due and the amount to be refunded, that this is examined by the assistant commissioner and then is delivered to the commissioner, who makes it effective by his approval."

While it is true that the issue involved in the Girard Trust Company case related only to the date of the allowance of a refund, the court, though by way of dictum, as it may be argued, also as definitely fixed the time of the allowance of credits. Its dictum as to the time of allowance of credits was, we think, an inevitable conclusion from its finding as to the time of allowance of a refund; since the amount to be refunded is absolutely determined when the credits are allowed. It is no answer to say that the directions in Form 7805 are authority to the collector to apply any overpayment on
60 any unpaid taxes for other periods and is therefore an allowance of such credits as the collector may see fit to make. It would be a strained construction of the commissioner's directions to the collector to hold that he thereby allowed and approved something of which he had no knowledge and could have none until a report was received back from the collector.

The Government, however, urges that the regulations of the Treasury Department and its practice has established a different rule as to credits, which should have great weight in construing these statutes; but it also, prior to the decision in the Girard Trust Company case, had the same regulation as to the date of allowance of refunds; yet the court in that case held that a regulation of the Treasury Department and its practice in this respect was not in accord with the statute, and that it did not control the plain effect of the acts of the commissioner and the collector. No good reason is now shown why the department regulation as to the allowance of credits should control what appears to be the only reasonable inference to be drawn from the facts.

It is also urged by the Government that since Congress, presumably in view of the court's decision in the Girard Trust Company case, has by its fiat in the revenue act of 1926 fixed the date of the allowance of refunds as the date of the issuing of the schedule of overassessments by the commissioner, and made no provision for fixing the date of the allowance of credits, that it is in effect a recognition by Con-

gress of the regulation and practice of the department as to the correct construction of the prior acts and of the commissioner's instructions to the collector as to the date of the allowance of credits.

How the Supreme Court may construe the effect of the revenue act of 1926 as to the time of allowance of future credits we cannot anticipate; but so long as its decision stands as to the time of allowing a refund prior to the enactment of the 1926 act, we think that the time of allowance of credits, if any, at least prior to that act, must be the same as that of the allowance of a refund or when the commissioner or his deputy approved the collector's report of his doings on Form 7805A.

The decision in Penn Smokeless Coal Co. v. United States,
61 decided in the western district of Pennsylvania, January 3, 1929, is of little weight to the contrary, inasmuch as the sitting judge in that case inadvertently misconstrued the opinion of the Chief Justice in the Girard Trust Company case.

The Court of Claims, however, in the case of Swift & Co. v. United States, decided May 6, 1929, followed the opinion of the Supreme Court as applied to the allowance of credits.

Even if large sums have been credited to taxpayers without the signature of the commissioner on the collector's report after it is returned to his office, it can not change the law, though it does not follow from facts stated by counsel in argument that the commissioner's assent to the report of the collector may not in each case have been implied.

In United States Circuit Court of Appeals

The judgments of the District Court are affirmed.

Order staying mandate

Thereafter, to wit, on January 2, 1930, upon motion by appellant, assented to, mandate was stayed until further order of court.

[Clerk's certificate to foregoing transcript omitted in printing.]

62 Supreme Court of the United States

Order allowing certiorari

Filed March 17, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1930

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Nos. ~~633~~ 42
~~633~~ 43

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES OF AMERICA, PETITIONER
v.
BOSTON BUICK COMPANY

UNITED STATES OF AMERICA, PETITIONER
v.
IRON CAP COPPER COMPANY

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

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UNITED STATES OF AMERICA, PETITIONER

v.

IRON CAP COPPER COMPANY

PETITION FOR WRITS OP CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, AND BRIEF IN SUPPORT THEREOF

PETITION

The Solicitor General, on behalf of the United States of America, prays that writs of certiorari issue to review the judgments of the United States Circuit Court of Appeals for the First Circuit entered in the above-entitled causes on November 5,

1929, affirming the judgments of the United States District Court for the District of Massachusetts.

STATEMENT

Boston Buick Company Case.—The facts as stipulated were substantially as follows:

On or about February 26, 1924, the corporation was notified by the Commissioner of Internal Revenue of an overassessment of $23,181.08 in its income and profits taxes for the fiscal year ended July 31, 1918, and was advised that the amount of the overassessment would be made the subject of a certificate of overassessment to be forwarded through the office of the Collector of Internal Revenue at Boston, and to be applied by him in accordance with Section 252 of the Revenue Act of 1921. (R. 6, 7.)

The overassessment in question was listed upon a schedule of overassessments, Form 7805, which was certified by the Commissioner of Internal Revenue under date of March 14, 1924, and forwarded to the Collector of Internal Revenue at Boston. (R. 7–8.) The certificate of the Commissioner directed the Collector to check the accounts of the taxpayers whose names appeared on the schedule, to determine whether or not their liabilities should be reduced by abatements, and if so, to make such abatements. (Ex. A, R. 8.) With reference to credits he directed the Collector as follows (Ex. A, R. 8):

> If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making appropriate entries in your accounts. (This applies only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of Refunds and Credits (Form 7805–A).

The Collector followed the directions of the Commissioner and on July 11, 1924, reported on Form 7805 and Form 7805–A that the entire amount of the overassessment had been found to be an overpayment and had been credited to taxes due from the corporation for other years, leaving no amount refundable. (Ex. A, Ex. B, R. 8.) On July 31, 1924, the Deputy Commissioner certified to the Commissioner on Form 7805–A (Ex. B, R. 8) that the items listed in Column 4 had been found to be the refundable portions of overassessments theretofore allowed and the accrued interest, if any, listed in Column 6 had been found due. On the same day the Commissioner of Internal Revenue signed the authorization on Form 7805–A which certified to the disbursing clerk of the Treasury Department the refundable amounts, Column 4, and the accrued interest, Column 6, and directed him to make payment of the totals shown in Column 7. (Ex. B, R. 8; R. 16, 23.) Nothing ap-

peared in Column 4, 6 or 7 opposite the name of the Boston Buick Company.

The corporation made application for interest on the credits. On February 1, 1926, the Commissioner allowed interest on the sum of $1,421.19, the amount of an additional assessment for the fiscal year ended July 31, 1918, from August 18, 1921, the date of such assessment, to March 14, 1924, the date on which the Commissioner signed the schedule of overassessments on Form 7805. As the Commissioner considered the latter date as the date of the allowance of the credit, the interest was computed under Section 1324 (a) of the Revenue Act of 1921. The corporation filed a claim for refund and upon its rejection instituted suit on the contention that the credits were allowed subsequent to the passage of the Revenue Act of 1924 (on June 2, 1924), and that interest on the credits should be computed under Section 1019 of the Revenue Act of 1924. (R. 9.)

The District Court gave judgment for the corporation, holding that the credits were allowed either when the Collector signed his certificate or when the Commissioner signed Form 7805–A, authorizing the Disbursing Clerk to pay the refunds and that as both dates were subsequent to June 2, 1924, Section 1019 of the Revenue Act of 1924 would govern the computation of interest. (R. 10, 15–18.)

The United States thereupon appealed to the Circuit Court of Appeals for the First Circuit, which on November 5, 1929, affirmed the judgment of the

District Court (R. 22) in an opinion reported in 35 F. (2d) 560.

Iron Cap Copper Company Case.—This case was tried on an agreed statement of facts (R. 6–22) except that the District Court, on the request of the United States, made special findings of fact relative to procedure in the Income Tax Unit with reference to certificates of overassessment, abatements, credits and refunds. (R. 27–40.) To save printing, the latter findings are not repeated here. The agreed facts were, in substance, as follows:

On January 28, 1924, the Commissioner of Internal Revenue notified the corporation of an overassessment of $180,322.66 in its income and profits taxes for the year 1918 and of certain deficiencies in taxes for other years. (R. 10.) On March 29, 1924, the Commissioner approved a schedule of overassessments, Form 7805, on which was listed the overassessment of the Iron Cap Copper Company. (R. 10–11.) This schedule was transmitted to the Collector at Boston and contained the directions which have been referred to above in the *Boston Buick Company case.*

The Collector followed the Commissioner's instructions and on July 14, 1924, certified on Form 7805 and Form 7805–A that $48,539.94 of the overassessment had been abated, leaving an overpayment of $131,782.72, and that he had applied $102,931.89 of the overpayment against deficiencies in tax for other years, leaving a balance to be re-

funded in the sum of $28,850.83. (R. 11–12; Ex. C, R. 16.)

On August 7, 1924 the Deputy Commissioner certified to the Commissioner on Form 7805–A the amounts found to be refundable and on the same day the Commissioner authorized the Disbursing Clerk to pay to the taxpayers entitled thereto, the amounts found to be refundable, listed in Columns 4, 6 and 7. (Ex. C, R. 16.) Opposite the name of the Iron Cap Copper Company appeared the sum of $28,850.83.

The Commissioner allowed interest on the refund made (there is no dispute as to such interest) but declined to allow interest on the amounts credited, contending that the interest should be computed under Section 1324 (a) of the Revenue Act of 1921, and under that Act no interest was due.

The corporation brought suit (after due rejection of a claim) to recover interest computed under the Revenue Act of 1924.

The District Court gave judgment for the corporation, holding that credit was allowed when the Commissioner signed the authorization on Form 7805–A to the Disbursing Clerk to pay the amounts listed theeron as refundable. (R. 41, 47–49.)

Upon appeal by the United States to the Circuit Court of Appeals for the First Circuit, judgment of the District Court was affirmed. The case was consolidated for hearing with the *Boston Buick Company case,* and a single opinion was rendered.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that a credit of an overpayment of income and profits taxes for one year against taxes due for another year was allowed when the Commissioner of Internal Revenue signed a subsidiary schedule of refunds and credits (Form 7805–A), directing the Disbursing Clerk of the Treasury to pay the amounts listed thereon as refundable.

2. In not holding that such credit was allowed when the Commissioner signed the certificate on the schedule of overassessments (Form 7805) stating that he had allowed the overassessments appearing thereon and directing the Collector of Internal Revenue to apply any overassessments found to be overpayments against any taxes due for other years.

REASONS FOR GRANTING THE WRITS

I. The cases raise a question, not heretofore decided by this Court, as to the time of the allowance of a claim for credit. The case of *Girard Trust Co.* v. *United States*, 270 U. S. 163, can not be said to have decided this question for the issue there involved was the date of the allowance of a claim for refund and the difference in procedure followed by the Treasury Department in the allowance of a refund and of a credit was not specifically brought to the attention of the Court.

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II. The Circuit Court of Appeals held that a credit is allowed when the Commissioner or Deputy Commissioner signs the subsidiary Schedule of Refunds and Credits, Form 7805–A, authorizing the Disbursing Clerk to make refunds of the amounts listed thereon as refundable, and that it is not allowed when the Commissioner signs the certificate of overassessments, Form 7805, and thus directs the Collector of Internal Revenue to apply any part of the overassessments found to be overpayments against any taxes due from the taxpayers for other years. This decision overturns the rule as to the computation of interest on credits followed by the Bureau of Internal Revenue in a vast number of interest cases and substitutes a rule which can not uniformly be applied. For example, in cases where there are no refunds to be made and there is no interest to be paid on credits listed on the subsidiary schedule, Form 7805–A, that schedule is not at any time signed by the Commissioner. Moreover, the result of such a rule would be incongruous because, since the Collector in every case actually applies the overpayment for one year against the tax due for another year upon receiving the schedule of overassessments from the Commissioner, he would thus reduce the liability of the taxpayer prior to the time that the credits would be regarded as "allowed" and in some instances without any "allowance" by the Commissioner.

III. There is some conflict in the decisions of the lower Federal courts. While the Court of Claims in the case of *Swift and Co.* v. *United States,* unreported, decided May 6, 1929 (petition for rehearing denied December 2, 1929), has adopted the view of the Circuit Court of Appeals for the First Circuit in the instant cases, the District Court for the Western District of Pennsylvania in the case of *Penn Smokeless Coal Co.* v. *United States,* 34 F. (2d) 205, has held *contra.*

IV. The cases are of vital importance to the Government and to the public, not only because of the millions of dollars involved in a great number of pending interest cases and in those that will arise, but also because of their effect on questions involving the statutes of limitation. If the date of the allowance of a credit is the date when the Commissioner signs the subsidiary schedule of refunds and credits, then millions of dollars of taxes have been collected through the application of credits after collection was barred by the statutes of limitation. On the other hand, large sums have been applied as credits to reduce tax liability after the expiration of the period prescribed for making such credits.

Wherefore, it is respectfully submitted that the petition should be granted.

CHARLES E. HUGHES, JR.,
Solicitor General.

FEBRUARY, 1930.

BRIEF IN SUPPORT OF THE PETITION

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the First Circuit (*Boston Buick Company case,* R. 22; *Iron Cap Copper case,* R. 53) is reported in 35 F. (2d) 560. The opinions of the District Court for the District of Massachusetts (*Boston Buick Company case,* R. 15; *Iron Cap Copper case,* R. 47) are reported in 27 F. (2d) 395 and 31 F. (2d) 628.

JURISDICTION

The judgments of the United States Circuit Court of Appeals for the First Circuit were entered on November 5, 1929. (*Boston Buick Company case,* R. 22; *Iron Cap Copper case,* R. 53.) The jurisdiction of this Court rests on the provisions of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Prior to the passage of the Revenue Act of 1924 the Commissioner of Internal Revenue signed a certificate on Form 7805, stating that the overassessments appearing thereon had been allowed and directing the Collector to apply any overpayments against any taxes due from the taxpayers for other years. Subsequent to the passage of the Revenue Act of 1924 the Collector returned Form 7805 to

the Commissioner with Form 7805–A, showing the amounts credited and the amounts refundable and the Commissioner thereafter signed Form 7805–A, directing the Disbursing Clerk to make payment of the amounts refundable. The question is:

Whether interest on the credits should be computed under Section 1324 (a) of the Revenue Act of 1921 or under Section 1019 of the Revenue Act of 1924; or, to state it another way, whether the credits were allowed when the Commissioner originally signed the schedule of overassessments, Form 7805, or when he signed the schedule of refunds and credits, Form 7805–A.

STATUTES INVOLVED

Revised Statutes, Sec. 3218 (U. S. C., Title 26, Sec. 147):

> Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; * * *.

Revenue Act of 1918, c. 18, 40 Stat. 1057, 1083, 1085, 1145:

> SEC. 250. (b) As soon as practicable after the return is filed, the Commissioner shall examine it. If it then appears that the cor-

rect amount of the tax is greater or less than that shown in the return, the installments shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the installments as recomputed, the excess so paid shall be credited against the subsequent installments; and if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of Section 252. * * *

SEC 252. That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," the Act of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," the Revenue Act of 1916, as amended, or the Revenue Act of 1917, it appears that an amount of income, war-profits or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided,* That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration

of such five years a claim therefor is filed by the taxpayer.

SEC. 1316. (a) That section 3220 of the Revised Statutes is hereby amended to read as follows:

"SEC. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section."

Revenue Act of 1921, c. 136, 42 Stat. 227, 264, 268, 316:

SEC. 250. (b) Same as Section 250 (b) of the Revenue Act of 1918, above quoted.

SEC. 252. Same as Section 252 of the Revenue Act of 1918, above quoted.

SEC. 1324. (a) That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

Revenue Act of 1924, c. 234, 43 Stat. 253, 296, 301, 346 (U. S. C., Title 26, Secs. 1045, 1046, 1065, 153):

SEC. 271. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 272. If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the excess shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount

determined to be the correct amount of the tax, the excess shall be credited or refunded as provided in section 281.

SEC. 281. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or any such Act as amended, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

SEC. 1019. Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against

> which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

STATEMENT

A statement of the facts and errors relied upon will be found in the petition except that the facts relating to procedure in the Bureau of Internal Revenue which are found in the special findings of fact in the *Iron Cap Copper Company case* (R. 27–40) are not repeated. They will be referred to in the argument.

ARGUMENT

The sole question involved in these cases is whether interest on an overpayment of taxes for one year applied as a credit against taxes due for another year should be computed in accordance with the provisions of Section 1324 (a) of the Revenue Act of 1921 or in accordance with the provisions of Section 1019 of the Revenue Act of 1924.

Petitioner and respondent agree that this question depends solely on when the credit was allowed and the Circuit Court of Appeals has so held. In this respect it is conceded that the cases are controlled by the decisions of this Court in *Girard Trust Co.* v. *United States*, 270 U. S. 163; *Blair* v. *Birkenstock*, 271 U. S. 348; and *United States* v.

Magnolia Petroleum Co., 276 U. S. 160, which recognize that the computation of interest on refunds shall be made under the Act in force when the refund is allowed.

The Circuit Court of Appeals has held that the allowance of a credit occurs when the Commissioner of Internal Revenue certifies to the disbursing clerk that the amounts shown to be refundable on the schedule of refunds and credits, Form 7805–A, should be paid, and that, since the certification in each case occurred after the passage of the Revenue Act of 1924, the interest should be computed in accordance with the provisions of that Act.

In so holding the Circuit Court of Appeals relied principally upon the decision of this Court in *Girard Trust Co.* v. *United States, supra*, in which it was held that a refund is allowed when the Commissioner signs Form 7805–A authorizing the disbursing clerk to pay the amounts shown on the schedule of refunds and credits, Form 7805–A.

It is our view that this case is not controlled by the decision in the *Girard Trust Company case* and that there are reasons for holding that the allowance of a credit does not occur at the same time as does the allowance of a refund.

Particular attention is, therefore, directed to the *Girard Trust Company case*. In that case a Schedule of Overassessments was signed on December 9, 1922, on which appeared overassessments of

$182,583.72 for the year 1920 and $107,372.36 for the year 1917 in favor of the *Girard Trust Company*. Upon the receipt of the schedule, the Collector applied $98,101.29 of the overassessment for the year 1920 as an abatement, $21.41 was credited against taxes for other years, and $84,416.02 was reported as an excess overpayment after making the credit. The $107,372.36 for the year 1917 was reported as an overpayment. The authorization to the Disbursing Clerk to pay the amounts refundable was signed by the Commisioner on January 16, 1923. The check in payment of the refund was dated February 10, 1923, and was received on February 20, 1923. The Commissioner allowed interest on the refundable portions from the date of payment computed to December 9, 1922, on the theory that the refunds were allowed on the date on which the Commissioner signed the Schedule of Overassessments. The Girard Trust Company contended that it was entitled to interest to the day when it received payment of the refunds on the theory that that was the date of the allowance of the refund.

The issue, therefore, was clearly defined between the company and the Government. It related solely to interest on *refunds*. No question was raised as to interest on the $21.41 credited, or as to the date of allowance of a credit, either before the Court of Claims or before this Court. No distinction was drawn in the briefs of either party between

the allowance of a credit and the allowance of a refund. This Court, in allowing interest to January 16, 1923, the date upon which the Commissioner authorized payment of the refund, said (p. 169):

> If Congress had intended that interest should be allowed to the date of the payment, it seems to us it would have said so. Allowance in its ordinary sense does not mean payment, and in the practical administration of the Treasury Department the two things are quite different. The one is a decision by the competent authority that the payment should be made. The other is the actual payment. The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and that a refund or credit should be granted, and when he has made that decision finally, he has allowed the claim for the refund or credit of the taxes paid within the meaning of the section.

In view of these facts, we submit that the *Girard Trust Company case* should not be considered as having decided the question as to when a credit is allowed. We recognize, however, that that case established two principles which are equally applicable to the allowance of a credit, namely: (1) that the allowance of a refund occurs when there is a decision by competent authority that a refund should be made, and (2) that a statute providing for the computation of interest should be construed

in the light of the difficulties of government bookkeeping and accounting.

As in the case of a refund, the "competent authority" who allows a credit is the Commissioner of Internal Revenue. See Section 250 (b) and Section 252 of the Revenue Acts of 1918 and 1921, *supra;* Sections 271, 272 and 281 (a) of the Revenue Act of 1924, *supra;* Section 3220 R. S. as amended by Section 1316 (a) of the Revenue Act of 1918, *supra.* Accordingly, the question as to when a credit is allowed must be determined with reference to acts of the Commissioner.

The first action taken by the Commissioner in reference to the credits in these cases was taken in March, 1924, when he approved the two schedules of overassessment, Form 7805, on which overassessments in favor of the Boston Buick Company and the Iron Cap Copper Company were listed. (*Boston Buick Company case,* R. 7–8; *Iron Cap Copper case,* R. 10–11.) In each case, the certificate signed by the Commissioner contained the following instructions.

> The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the "Certificates of Overassessment" or "Notices of Adjustment of Claim for Abatement" attached thereto.
>
> You will immediately check such items against the accounts of the several tax-

payers, and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated, in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts. (This applies only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of Refunds and Credits (Form 7805–A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805–A) referred to above, and an appropriate *memorandum* made upon the taxpayers' account.

You will thereupon complete and certify this schedule and the schedule upon Form 7805–A, and return the necessary copies of each to the Commissioner of Internal Revenue.

It is submitted that these instructions constitute a positive order to make the credit and reduce the tax liability. It is true that the Commissioner does not name the specific amount to be credited but he directs the Collector to examine the accounts, to

ascertain the amount of taxes due, and to apply the credit to the extent that it is necessary to discharge the liability. The Collector has no discretion except to act as the Commissioner directs and as the state of the accounts warrants.

If this be not the allowance of a credit it is difficult to see what language the Commissioner could use for his directions to constitute the allowance of a credit. To hold that this authorization by the Commissioner does not constitute an allowance of a credit is to hold that a taxpayer's tax liability may be discharged without the credit having been allowed by any authority.

When the Commissioner directs the Collector to ascertain whether any portion of the overassessment constitutes an overpayment and to apply the overpayment as a credit, he has made a final decision as to the disposition of the overpayment by way of credit and he never thereafter, either in a certificate of any kind or in a communication to the Collector, directs an allowance of a credit or refers to the allowance of a credit.

It is our position, therefore, that the credits in the cases at bar were allowed in March, 1924, when the Commissioner signed the certificate on Form 7805, and that as this action occurred prior to the passage of the Revenue Act of 1924 interest on the credits should be computed under the Revenue Act of 1921.

The court below, however, has disregarded the fact that the Commissioner takes no further ac-

tion as to the allowance of credits after he makes his original certification on Form 7805 and has considered that he takes the same action with respect to credits as he does with respect to refunds.

It is true that the instructions of Form 7805 which were signed by the Commissioner directed the Collector to enter on Form 7805–A the amounts which were credited. (*Boston Buick Company case*, Ex. B, R. 8.) It is significant, however, that the Collector's certificates on Form 7805 (*Boston Buick Company case*, Ex. A, R. 8) stated that certain amounts had been *applied as abatements and credits* and that other amounts were "refundable."

It further appears from the exhibits that, in accordance with the practice then in effect, upon the return of the schedules the Deputy Commissioner certified to the Commissioner the refundable portions of the overassessments and the accrued interest. His certificate made no reference whatever to the amount of the abatements or to the amounts credited.

Nor did the certificate subsequently signed by the Commissioner contain any reference to credits. This certificate was no more than an authorization to the Disbursing Clerk of the Treasury to pay to the taxpayers entitled thereto the refunds and interest due. The certificate is not directed to the Collector, nor to the taxpayer, nor to any one who might be concerned directly or indirectly in the *credit* in question. It refers neither directly nor indirectly to a credit. As a matter of fact, the Col-

lector was never notified of the signing of the certificate on Form 7805–A by the Commissioner and he took no further action after the Commissioner signed it. Comparing the certificate of the Commissioner, directed to the Collector, which appears on the Schedule of Overassessments, Form 7805, with the certificate of the Commissioner directed to the Disbursing Clerk of the Treasury, which appears on the Schedule of Refunds and Credits, Form 7805–A, it is submitted that the credit was allowed in the certificate to the Collector and not in the authorization to the Disbursing Clerk of the Treasury.

This view finds further support when consideration is given to procedure in the Income Tax Unit and to the consequences which would flow from the adoption of the rule that a credit is not allowed until Form 7805–A is signed by the Commissioner.

The most obvious difficulty arises from the fact that under the procedure in effect when these credits were allowed the Commissioner did not in every case sign Form 7805–A. In any case where Form 7805 was returned from the Collector with the statement that there were no items refundable and no interest was to be paid on credits, the schedule was filed without being signed by the Commissioner. (*Iron Cap Copper case*, R. 35.)

Moreover, under the procedure which existed prior to the time that interest was allowed on credits, that is, prior to the passage of the Revenue Act of 1921 on November 23, 1921, credits were not

listed on the subsidiary schedule, and the instructions to the Collector directed him to prepare a schedule of refunds only in cases where there were refunds. (*Iron Cap Copper case*, R. 28–31.) At the present time and in fact since January, 1927, Form 7920 has superseded Forms 7805 and 7805–A. Under the procedure governing the use of that form, the Commissioner makes only one certification. This certification contains instructions to the Collector practically identical with those on Form 7805, to which are added the following instructions (*Iron Cap Copper case*, R. 37):

> The DEPUTY COMMISSIONER of Internal Revenue will compute the interest payable, list the same in column 8, and enter the respective total amounts payable in column 9 or 10, or both.
>
> The DISBURSING CLERK, Treasury Department, is authorized to pay the amounts specified in column 9 or 10, or both.

It is thus apparent that the Circuit Court of Appeals in these cases has adopted a rule for the computation of interest which can not uniformly be applied without reaching the conclusion that credits totalling millions of dollars have been allowed without authority either because they were allowed after the statute of limitations had expired or because the Commissioner never in fact signed the subsidiary schedule of refunds and credits.

The Bureau of Internal Revenue has consistently taken the position that a credit is allowed when the

Commissioner of Internal Revenue signs the schedule of overassessments except during the period when Treasury Decision 3850, Cumulative Bulletin V–1, p. 354, was in effect. This decision which published the *Girard Trust Co.* decision with head notes indicating that it was applicable to credits as well as to refunds, was approved April 8, 1926, but was revoked by Treasury Decision 3919, approved August 25, 1926, Cumulative Bulletin V–2, p. 209. The rule that a credit is allowed when the schedule of overassessments is approved by the Commissioner is a rule which can be applied uniformly and is adapted to the Treasury Department's system of bookkeeping. Under the Revenue Act of 1926, by express enactment refunds are regarded as allowed on the date when the certificate of overassessment is signed. (Sec. 1116 (b) (2) of the Revenue Act of 1926, c. 27, 44 Stat. 9, 119; U. S. C. App., Title 26, Sec. 153.)

The rule of the Internal Revenue Bureau has been approved by the District Court for the Western District of Pennsylvania in the case of *Penn Smokeless Coal Co.* v. *United States*, 34 F. (2d) 205. On the other hand the Court of Claims in the case of *Swift and Co.* v. *United States*, unreported, decided May 6, 1929 (petition for rehearing denied December 2, 1929), has adopted the same views as the Circuit Court of Appeals for the First Circuit in the instant case. Petition for certiorari will be filed in the *Swift and Company case.*

CONCLUSION

In view of the general importance of the questions decided we submit that this petition for writs of certiorari should be granted.

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FEBRUARY, 1930.

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DEC

Nos. 42 and 43

In the Supreme Court of the United States

OCTOBER TERM, 1930

THE UNITED STATES OF AMERICA, PETITIONER

v.

BOSTON BUICK COMPANY

THE UNITED STATES OF AMERICA, PETITIONER

v.

IRON CAP COPPER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

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The opinions of the District Court for the District of Massachusetts (*Boston Buick Company,* R. 14; *Iron Cap Copper Co.,* R. 34) are reported in 27 F. (2d) 395 and 31 F. (2d) 628, respectively. The opinion of the Circuit Court of Appeals for the First Circuit (*Boston Buick Company,* R. 19; *Iron Cap Copper Co.,* R. 37) is reported in 35 F. (2d) 560.

JURISDICTION

The judgments of the Circuit Court of Appeals for the First Circuit were entered on November 5, 1929. (*Boston Buick Company*, R. 18; *Iron Cap Copper Co.*, R. 36.) Petition for certiorari was filed February 5, 1930, and certiorari was granted March 17, 1930, 281 U. S. 709. (R. 23.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The question involved in these cases is whether interest on an overpayment of taxes for one year applied as a credit against taxes due for another year should be computed in accordance with the provisions of Section 1324 (a) of the Revenue Act of 1921 or in accordance with the provisions of Section 1019 of the Revenue Act of 1924. (These sections appear in Appendix A, pp. 40–42, *infra*.)

The date of the allowance of the credit is material because if it was "allowed" *before* June 2, 1924 (the effective date of the Revenue Act of 1924), the legal effect of the allowance is determined under the Revenue Act of 1921, while if it was "allowed" *after* June 2, 1924, the legal effect is determined under the Revenue Act of 1924.

It is agreed that interest should be computed under the Act in force when the credit was allowed, as was held with reference to the computation of

interest on refunds in *Blair* v. *Birkenstock,* 271 U. S. 348, and *United States* v. *Magnolia Petroleum Company,* 276 U. S. 160.

If the credits in these cases were allowed before June 2, 1924, and therefore under the Act of 1921, interest on the credit would run *to* the date of allowance of the credit but only *from* six months after the date of filing of claim for refund or credit by respondents. If the credits were allowed after June 2, 1924, and under the Act of 1924, interest would run *from* date of payment of tax *to* the dates of the additional assessments against which the overpayments were credited. The latter is the more advantageous to the respondents.

In the instant case, prior to the passage of the Revenue Act of 1924, the Commissioner of Internal Revenue signed the certificates appearing on a schedule of overassessments, Form 7805, stating that the overassessments appearing thereon had been allowed and directing the Collector to apply any overpayments against any taxes due from the taxpayers for other years. Subsequent to the passage of the Revenue Act of 1924, the Collector made his entries upon the schedule of overassessments and returned it together with a subsidiary schedule, known as Schedule of Refunds and Credits, on which he certified to the Commissioner the amounts which had been applied on the taxpayer's accounts as abatements and credits, showing the amounts which appeared to be

refundable to the several taxpayers. Thereafter the Commissioner signed the authorization to the disbursing clerk to make payments of the amounts refundable.

The petitioner contends that a credit was allowed when the Commissioner signed the schedule of overassessments with the authorization to the Collector, and the respondents contend that credit was allowed either when the Collector applied the credit on unpaid taxes or when the Commissioner signed the schedule of refunds and credits after the credits had been applied.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in Appendix A, *infra*, pp. 38–45.

STATEMENT

The facts in the two cases are almost identical except for the dates involved, and no legal significance attaches to this difference in dates. In each the taxpayer was notified by the Commissioner of Internal Revenue of an overassessment in its income and profits taxes for the year 1918. (*Boston Buick Co.* R. 5; *Iron Cap Copper Co.* R. 6.) On March 14, 1924, and March 29, 1924, the Commissioner certified his approval upon schedules of overassessments, on Form 7805, on each of which was listed one of the overassessments in question. (*Boston Buick Co.* R. 5; *Iron Cap Copper Co.* R. 6.) These schedules were forwarded to the Collector

of Internal Revenue at Boston with directions that he check the accounts of the taxpayers whose names appeared on the schedule, determine whether or not their liabilities should be reduced by abatements and if so make such abatements, and "if any part of such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts." (*Boston Buick Co.* R. 6, 7; *Iron Cap Copper Co.* R. 7, 12.) The Revenue Act of 1924 was enacted on June 2, 1924. The Collector followed the directions of the Commissioner, and on July 11, 1924, and July 14, 1924, made the entries in his accounts and returned Form 7805 with Form 7805–A, on which he stated what amount of the overassessment had been abated, what amount of the remaining overpayment had been credited against deficiencies for other years, and what amount was refundable. (*Boston Buick Co.* R. 5; *Iron Cap Copper Co.* R. 7.) In the *Boston Buick Co. case* no amount was refundable, as the whole overpayment was applied by the Collector as a credit. (*Boston Buick Co.* R. 9.)

In the *Iron Cap Copper case*, on August 7, 1924, the Deputy Commissioner certified to the Commissioner the amount found refundable, and on the same day the Commissioner signed the authorization on Form 7805–A, which authorized the disbursing clerk of the Treasury Department

to pay to the taxpayer the amount refundable. (*Iron Cap Copper Co.*, R. 13.) In the *Boston Buick Co. case*, as nothing was refundable (*Boston Buick Co.*, R. 9), the certificate signed by the Deputy Commissioner, the schedule of refunds and credits signed by the Commissioner,[1] and the order sent to the disbursing clerk referred merely to the accounts of other taxpayers shown on the same schedule.

The Commissioner computed interest under the Revenue Act of 1921. The taxpayers contended that the credits were allowed subsequent to the enactment of the Revenue Act of 1924 on June 2, 1924, and that interest on the credits should be computed under Section 1019 of that Act. After due rejection of their claims, suits were brought in the District Court. That court gave judgment for the taxpayers, holding in the *Boston Buick Co. case* that the credits were allowed either when the Collector signed his certificate or when the Commissioner authorized the disbursing clerk to pay the refunds due other taxpayers listed on the same schedule (R. 16), and in the *Iron Cap Copper Co. case* that the credits were allowed at the date the Commissioner authorized the disbursing clerk to pay the refunds to the Iron Cap Copper Co. (R.

[1] By some error this schedule of refunds and credits as printed at page 8 of the *Boston Buick Co.* record does not bear the signatures of the Commissioner and Deputy Commissioner. The certificates on the original schedule were signed by these officials.

35.) The Circuit Court of Appeals for the First Circuit affirmed both judgments, holding that the allowance of a credit occurred when the Commissioner of Internal Revenue certified to the disbursing clerk of the Treasury that the amounts shown to be refundable on a schedule of refunds, Form 7805–A, should be paid, and saying that since the certification was made in each case after the passage of the Revenue Act of 1924, interest should be computed in accordance with the provisions of that Act.

In so holding the Circuit Court of Appeals relied principally upon the decision of this Court in *Girard Trust Co.* v. *United States,* 270 U. S. 163, in which it was held that a refund is allowed when the Commissioner signs Form 7805–A authorizing the disbursing clerk to pay the amounts shown on the schedule of refunds and credits, Form 7805–A.

It is our view that the instant cases are not so controlled by the decision in the *Girard Trust Company case* and that the allowance of a credit did not occur at the same time as did the allowance of a refund.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that a credit of an overpayment of income and profits taxes for one year against taxes due for another year was allowed when the Commissioner of Internal Revenue signed a subsidiary schedule of refunds and credits (Form

7805–A), directing the disbursing clerk of the Treasury to pay the amounts listed thereon as refundable.

2. In not holding that such credit was allowed when the Commissioner signed the certificate on the schedule of overassessments (Form 7805) stating that he had allowed the overassessments appearing thereon and directing the Collector of Internal Revenue to apply any overassessments found to be overpayments as a credit against any taxes due for other years.

SUMMARY OF ARGUMENT

I. The Commissioner of Internal Revenue is the official who has authority to determine overassessments. The Collector merely carries out orders of the Commissioner. The Commissioner signs a schedule of overassessments which directs the Collector to check the items appearing thereon against the accounts of the several taxpayers and determine whether the amounts in which the tax liabilities are reduced should be respectively abated in whole or in part; to make such abatements as may be warranted, and then, if any part of the item is found to be an overpayment, to apply the overpayment as a credit against other taxes due. This is the final authorization by a competent authority that an overpayment shall be applied as a credit. The Collector merely does the routine work necessary to comply with the directions of the Commissioner, and then sends to the Commissioner a schedule of

refunds and credits showing the disposition of the amount of the overpayment. When this schedule is received in the office of the Commissioner, the Deputy Commissioner goes over it and certifies to the Commissioner a list of items found to be the refundable portions of overassessments theretofore allowed. The Commissioner then authorizes the disbursing clerk in the Treasury Department to make payment of the refundable portions of the overassessments.

II. The word "allowance" as used in the statute means "authorization" rather than "payment" or "ratification". "Authorization" and "permission" have been judicially defined as synonymous with "allowance." Allowance implies discretionary action rather than the performance of a ministerial duty. The act of the Commissioner in signing the schedule of overassessments is the only exercise of discretionary judgment in the allowance of a credit. The application of the credit following the signing of the schedule of overassessments is a routine matter. The allowance of a credit must precede the payment by the credit. The *Girard Trust Company case,* in deciding that the allowance of a refund is the final decision (prior to the actual payment) that it should be made, supports this construction.

III. This construction has been adopted by the regulations of the Treasury Department. The reenactment of the statutory language involved after

this administrative interpretation is Congressional approval of this construction.

ARGUMENT

I

IN THE ADMINISTRATION OF THE TAX LAWS, THE FINAL DECISION BY A COMPETENT AUTHORITY THAT AN OVERPAYMENT SHALL BE APPLIED AS A CREDIT IS MADE WHEN THE COMMISSIONER SIGNS THE SCHEDULE OF OVERASSESSMENTS

A brief description of the procedure of the Bureau of Internal Revenue [2] will supply the background against which the wording of the administrative provision of the tax statute must be considered. Prior to February, 1922, there were no certificates of overassessment and, therefore, no schedules of overassessment. The allowance of a claim for credit had no necessary connection with the allowance of a claim for refund. If a credit claim was filed, it was listed on a credit schedule and transmitted to the appropriate Collector. The same procedure applied to abatements. The approval of a credit schedule was considered final, and no report was made by the Collector to the Commissioner subsequent to its approval or allowance by the Commissioner. Claims for refund were not scheduled to the Collector. When allowed by the Commissioner, they were sent directly to the disbursing clerk of the Treasury for the issuance of checks. The result was that it frequently

[2] See *Iron Cap Copper Co.* R. 21–29.

happened that refunds would be allowed and paid while there was an outstanding unpaid tax liability.

It was to meet this situation that the use of the certificate of overassessment was adopted. It became effective February 2, 1922. Certificates of overassessment were scheduled on what was first known as Form 7777, and the schedules were transmitted to the Collector with the certificate of the Commissioner. The certificates on Form 7777 were practically like those appearing on Form 7805 used in the instant cases. They contained a certificate that the reduction of tax liability was approved and allowed, and a direction to the Collector (1) to check the accounts of the taxpayer for the year in question and to abate so much of the assessment as was necessary and then, if any part of the tax was found to be an overpayment, (2) to apply such overpayment as a credit against taxes due from the taxpayer, and then, if this application left a balance overpaid, (3) to enter the same in the appropriate columns on the schedules and return the same to the Commissioner. The Collector on the same form certified the amounts which had been applied as abatements and credits and also the amount of overpaid balance. He returned with this schedule a subsidiary schedule of refunds on Form 7777–A. Upon receipt of these two schedules in the Commissioner's office, the Deputy Commissioner certified on Form 7777–A that the items had been examined and that the amounts of over-

payment to be refunded by disbursement checks, as indicated therein, had been found due. There was no reference to credits in the certificates on the subsidiary schedule of refunds (Form 7777–A).

The Revenue Act of 1921, which became effective November 23, 1921, was the first Act to provide for the payment of interest upon the allowance of claims for credit and refund. The subsidiary schedule, Form 7777–A, had been prepared merely to effect payment of refund items. As the findings here recite:

> If the entire amount of the overassessment was either abated or credited, the collector was under instructions to mail the original certificate of overassessment to the taxpayer. If it appeared that any amount was to be refunded, his instructions were to return the original certificate of overassessment to the Bureau, with copies of the schedules of overassessments and the original schedule of refunds. (*Iron Cap Copper Co.*, R. 23.)

There was no place on Form 7777–A for the entry of amounts of interest due on credit claims. In order to enable the Commissioner to refund interest on credits, it was necessary to type credit items. Therefore, the forms were revised and reissued as Forms 7805 and 7805–A, which correspond with the schedules in the instant cases. The new Form 7805–A was entitled "Schedule of Refunds and Credits," and an additional col-

umn was added to the printed form and was entitled "Amount Credited." These schedules are printed in the *Boston Buick Co.* Record, pages 6–9, and the *Iron Cap Copper Co.* Record, pages 12 and 13. A copy of each form is shown in Appendix B, *infra*, p. 46.

The purpose for which the schedules were returned from the Collector to the Commissioner was to enable the latter to check the Collector's adjustments and determine whether refunds and interest on the refunds and credits should be paid. When this subsidiary schedule reached the Commissioner, the Collector's recommendation as to the amount of the refund was checked before the Commissioner signed the authorization to the disbursing clerk.

It is argued in the respondent's brief in opposition to the petition for certiorari in the *Iron Cap Copper Co. case* (pp. 34, 35) that the certificate of overassessment (not to be confused with the schedule of overassessments) followed the final approval of the schedule of refunds and credits by the Commissioner. This certificate states that the amount of overassessment "will be abated, credited, or refunded as indicated below." From this it is argued that even at this late date the credit is apparently to be made in the future. This argument is unsound and misleading. It ignores the finding of fact that the certificate of overassessment is prepared before the schedule of overassessments and that the certificate of over-

assessment and the schedule of overassessments are forwarded together by the Commissioner to the Collector. The signing of the certificate of overassessment by the Deputy Commissioner precedes the signing of the schedule of overassessments by the Commissioner. It is prepared and signed before the credit is allowed. (*Iron Cap Copper Co.* R. 21.)

The authority and duties of the Commissioner and the Collector are statutory.

Section 3220, Revised Statutes (Revenue Act of 1921, c. 136, 42 Stat. 227, 314) provides in part:

> The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected: * * *.

Revised Statutes, Section 3218 (U. S. C., Title 26, Sec. 147), provides in part:

> Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited

> with him, and with all moneys collected for penalties, forfeitures, fees, or costs: * * *.

The relation of these two officials is such that the Commissioner's directions are to be carried out by the Collector. Thus, after determining overassessments, the Commissioner listed a number of certificates of overassessment on a schedule of overassessments, Form 7805 (*Boston Buick Co.*, R. 6; *Iron Cap Copper Co.*, R. 12; Appendix B, *infra*, p. 46), and transmitted the schedule to the Collector with directions as follows:

> The amounts listed in column 4 as overassessments * * * are hereby approved and * * * allowed in the respective amounts * * *.
>
> You will immediately check such items against the accounts of the several taxpayers * * * and make such abatements as may be warranted * * *.
>
> If any part of such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts.

This was the authorization which the Government contends was the *allowance* of a credit. The District Court said of this (*Boston Buick Co.*, R. 16):

> It will be noted that the collector, without further action on the part of the commissioner, was authorized to enter upon the

> petitioner's account a credit against outstanding taxes due from it. His authority to record this credit was contained in the schedule of overassessments.

Under this authority the Collector credited the entire amount of the overpayment of the Boston Buick Co. against taxes for other years. There was no balance to be refunded. Part of the overpayment of the Iron Cap Copper Co. was used as a credit and a part was left to be refunded. The Collector in each case then signed a certificate on Form 7805, prepared by the Commissioner, in which he certified to the Commissioner "* * * the amounts indicated *have been applied as* abatements and *credits* * * *." (Italics ours.) These certificates indicate that the credits were allowed or authorized by the Commissioner when he certified to the Collector, and that the credits had actually been made when the Collector certified to the Commissioner. The application of the credit was then an accomplished fact. The taxpayers' indebtedness to the extent of the applied credit was finally and completely paid.

The subsequent certification by the Commissioner to the disbursing clerk of the Treasury has no bearing upon the allowance of a credit.

The disbursing clerk of the Treasury Department is, as his name implies, a clerk appointed by the Secretary of the Treasury, under bond, authorized to sign warrants on the Treasury Department

for the payment of money when properly authorized so to do. He has no part either in the assessment or collection of taxes. His sole duty is to execute checks or warrants only upon vouchers executed by competent authority. He is concerned only with the payment of money from the Treasury of the United States.

The certificate to him from the Commissioner stated (*Boston Buick Co.* R. 8; *Iron Cap Copper Co.* R. 13):

> The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due. Payment may, therefore, be made in the amounts shown in column 7.

Neither in this certificate nor in the columns referred to is any mention of credits made directly or indirectly.

It is apparent from the authority conferred by Congress upon the Commissioner that he is the only one who may reduce an assessment of tax, or, in other words, allow an overassessment. He is the only one who may authorize a credit. He is the only one who may allow a tax, once paid, to be repaid or refunded.

It is also apparent that the Collector's entire duty is to collect the taxes assessed by the Commissioner. He may not abate an assessment, credit an overpayment, or refund an overpayment

on his own initiative. But he has the power and the duty to abate an assessment which appears on the account of a taxpayer when the abatement has been allowed by the Commissioner and the tax has not been paid by the taxpayer. It is also his duty to credit an overpayment of taxes for one year against taxes due for another year, but only after authorization by the Commissioner.

As the Collector may not refund taxes and as the disbursing clerk of the Treasury may not credit taxes, and as the two officers have no connection either directly or indirectly with each other, it is difficult to comprehend how an authorization of the Commissioner to the disbursing clerk of the Treasury to pay money can in any way be construed as the allowance of a credit which may be made by the Collector. The Special Findings of Fact in the *Iron Cap Copper Co. case*, state (R. 26, 29):

> No other action was taken by the commissioner with reference to credits other than what appears on the schedule of overassessments on Form 7805 and with reference to interest on credits that appears on Form 7805–A.
>
> * * * * *
>
> Under the regular procedure there is no other communication, authorization, or instruction from the commissioner to the collector with reference to the overassessments except what is contained on the schedule of overassessments. This was true in the present case.

> After the allowance of the overassessment there remains just routine matter in applying the overassessment to the status of the taxpayer's account. The law requires an overpayment to be credited to outstanding taxes. The commissioner's instruction to the collector on the schedule of overassessments is that he shall apply the overassessment to the taxpayer's account.

Since the certificate on this schedule of overassessments is the only word with reference to credits which passes from the Commissioner to the Collector, his intent must be to allow a credit when he signs this authorization to the Collector and not when he signs the authorization to the disbursing clerk appearing on the schedule of refunds.

The Commissioner need not know the exact amount to be credited in advance of allowance. Since January, 1927, with the adoption of Form 7920 (*Iron Cap Copper Co.*, R. 26–28), which superseded Form 7805 and Form 7805–A, the Commissioner has not known the amounts to be abated, the amounts to be credited, or the amounts to be refunded. But no one will question that the signing of the certificate on Form 7920 now in use constitutes an allowance by the Commissioner of abatements, credits, and refunds. It is to be noted Section 1116 (b) (2) of the Revenue Act of 1926 (*infra*, pp. 43–44) expressly provides that the date of allowance of a claim for refund is the date on which the Commissioner signs the schedule of overassessments.

II

THE "ALLOWANCE" OF A CREDIT, REFERRED TO IN SECTION 1324 (A) OF THE REVENUE ACT OF 1921 AND SECTION 1019 OF THE REVENUE ACT OF 1924, IS THE AUTHORIZATION OF A CREDIT BY THE COMMISSIONER WHEN HE SIGNS THE SCHEDULE OF OVERASSESSMENTS

A. The word "allowance" as used in these sections in the clause "the allowance of a credit or refund" means "authorization" rather than "payment" or "ratification"

Section 1324 (a) of the Revenue Act of 1921 (*infra*, p. 40) provides that—

> upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate * * *.

The word "allowance" is used similarly in regard to both credits and refunds in the other pertinent statutes.

"Authorization" is a common meaning of "allowance." In considering what was an allowance of a transfer of a fire-insurance policy, the Supreme Court of Pennsylvania in *Marshall* v. *Franklin Fire Insurance Company of Philadelphia*, 176 Pa. 628, said:

> This depends upon the construction of the word "allow." This word is ordinarily equivalent to the word "permit," or to the words "consent to." Its use in any given case assumes the existence of a power to

> refuse to allow, permit, or consent to, and the right to elect whether to grant or withhold the allowance or permission asked for.

The word "allow" is also commonly used in regard to appeals permitted by statute. In *Castro* v. *United States*, 3 Wall. 46, this Court used the word in this sense, saying "we have no jurisdiction of this appeal unless it has been *allowed* by some act of Congress and has been brought in substantial conformity with the legislative directions." (Italics ours.)

In *Johnson* v. *Fleet Corporation*, 280 U. S. 320, 327, this Court said:

> Putting the United States and the Fleet Corporation on the same footing and providing remedies to be exclusive in admiralty would not serve substantially to establish uniformity if suits under the Tucker Act and in the Court of Claims be *allowed* against the United States and actions at law in state and federal courts be permitted against the Fleet Corporation * * *. (Italics ours.)

This Court has already defined the "allowance of a refund" in *Girard Trust Co.* v. *United States*, 270 U. S. 163, 169, *supra*, in which it said:

> Allowance in its ordinary sense does not mean payment, and in the practical administration of the Treasury Department the two things are quite different. The one is a decision by the competent authority that the payment should be made. The other is

> the actual payment. The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and that a refund or credit should be granted, and when he has made that decision finally, he has allowed the claim for the refund or credit of the taxes paid within the meaning of the section.

The *Girard Trust Co. case* applied this definition only to the allowance of a refund but construed the word "allowance" involved here to mean "authorization." We contend that the allowance must precede the actual payment of the tax by application of the credit and that the allowance is a decision by competent authority that the credit should be made. The actual crediting is the entry upon the taxpayer's account by the Collector after allowance.

Section 250 (b) of the Revenue Act of 1921 provides in part:

> That as soon as practicable after the return is filed the Commissioner shall examine it. * * * if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of Section 252.

And Section 252 provides in part:

> if, upon examination of any return * * * it appears that an amount of income * * * tax has been paid in excess of that properly due, then * * * the

> amount of the excess shall be credited against any income * * * taxes * * * then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer.

From these sections it is apparent that Congress intended that the Commissioner should take two steps with reference to an overpayment. First, that he should allow a credit to be made to the extent of the outstanding taxes then due if within the limit of the overpayment; and second, if after the allowance and the application of the credit there was any balance, that he should then refund the balance.

The signing of the schedule of overassessments by the Commissioner is the ultimate act that precedes the payment of the tax by application of the credit. It is the executive justification for the act of the Collector in the application of the credit. The function of the Collector after the receipt of the authorization from the Commissioner in the form of the schedule of overassessments is the performance of a statutory and ministerial duty. His responsibility is the arithmetical determination of the status of the taxpayer's account and the payment of the tax due by the application of the credit from the overpayment.

Under the practice it is impossible to determine that there will be a refund until after the allowance and application of a credit. As in the *Boston Buick*

Co. case, the overpayment may be exhausted by the credit so that there will be no refund. There is then no reason for the Commissioner to take any further action. Had there not been accounts of other taxpayers set out on the same Form 7805–A which contained the records of the Boston Buick Co., the certificate on the schedule of refunds and credits would not have been signed by the Commissioner. Under the rule of the *Girard Trust Co. case*, no refund would have been allowed, and yet the credit in fact had already been allowed and applied. The special findings in the *Iron Cap Copper Co. case* describe the procedure in such a case (R. 26):

> In the event that Schedule 7805–A disclosed no refundable items of tax and no interest allowable on credits which had been allowed, the instructions were to mark the original schedule of refunds and credits as cancelled, place it in a special loose-leaf binder for reference, if necessary, to likewise mark the bureau record copy as cancelled, indicate where the original was on file and file the bureau record copy in its proper place, according to the serial number. In these cases, no certificate was signed by the Commissioner of Internal Revenue.

This demonstrates that a credit was allowed prior to the allowance of a refund and without regard to whether in fact any refund was to be allowed. The fact that the Commissioner might check the adjustments of the Collector after the tax

has been paid by the application of the credit does not change the finality of his decision allowing the credit. See *Girard Trust Co.* v. *United States*, 270 U. S. 163, 170.

That interest on the credit may be due does not change the date of allowance of the credit. Interest on credits is dealt with and paid like a refund. (*Iron Cap Copper Co.*, R. 34.) The computation and payment of interest on the credit is a separate and distinct transaction from the allowance and application of the credit.

In the instant cases the Circuit Court of Appeals held in substance that "allowance" should be construed to mean "ratification." (*Boston Buick Co.* R. 22; *Iron Cap Copper Co.* R. 40.) As applied to the instant case, this means approval of the credit already applied against the taxpayers' indebtedness by the Collector. The certificate of the Collector to the Commissioner unequivocally states that "the amounts indicated have been applied as abatements and credits on their [taxpayers'] accounts" (*Boston Buick Co.* R. 6; *Iron Cap Copper Co.* R. 12). The application of the credit against the indebtedness is then an accomplished fact. Any action of the Commissioner after the receipt of this certificate from the Collector would of necessity be confined to an approval or ratification. This is a recognized meaning of allowance, but in view of the *Girard Trust Co.* decision that allowance of a refund means

the authorization before payment, we submit that it should be given a similar meaning as to credits. The statute reads: "That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid * * *." To construe a single word with conflicting interpretations as applied to two modifying phrases in the same sentence is ungrammatical and incongruous. The taxpayers argue from the *Girard Trust Co.* decision that there can be no allowance of a credit until the exact amount of the credit is determined, but we submit that this consideration does not justify the strained interpretation of allowance to mean ratification.

It may be urged that the credit is allowed when the Collector determines for the first time the exact amount of the credit and applies it on the taxpayer's account. This would mean that the allowance, and application of, the credit are simultaneous acts of the Collector. This is inconsistent with this Court's statement in the *Girard Trust Co.* case that "allowance" in this statute is not payment, but the decision that payment be made. The application of a credit is the payment of the tax against which the credit is applied. The Collector has no statutory authority to allow either a credit or refund. (See pp. 14–18, *supra.*) That function is conferred exclusively upon the Commissioner.

This view is also inconsistent with the view of Congress as shown by the Revenue Act of 1926. By Section 1116 (b) (2) of that Act (*infra*, pp.

43–44), Congress changed the law as stated by the *Girard Trust Co. case,* and declared that a refund is allowed when the Commissioner signs the schedule of overassessments. It is, we submit, impossible as a matter of bookkeeping to *allow a refund* before the *allowance of a credit,* for, as in the *Boston Buick Co. case,* there may be no refund if the credit exhausts the overpayment. Thus the Revenue Act of 1926 shows that Congress must have intended that a credit be allowed not later than when the refund is authorized by the Commissioner's signature on the schedule of overassessments. Yet in enacting that Act no change was made as to the date of allowance of a credit. There has been no Congressional definition of the allowance of a credit. Substantially the same language in reference to the allowance of a credit is used in the Revenue Acts of 1921, 1924, and 1926. "The allowance of a credit" in Section 1116 (a) of the Revenue Act of 1926 is used in the same connection and has the same significance as "the allowance of a credit" in Section 1019 of the Revenue Act of 1924 and as "the allowance of a claim for credit" in Section 1324 (a) of the Revenue Act of 1921. We submit that this phrase is used in the three Revenue Acts in the same sense, and that if a credit is allowed under the Revenue Act of 1926 when the Commissioner signs the schedule of overassessments, then under the prior statutes which control the instant case, a credit is allowed not by the Col-

lector, but by the Commissioner on the date when he signs the schedule of overassessments.

Moreover, under the Revenue Act of 1926 Congress considered that a credit could be allowed before it was "taken." Section 1116 (c) of the 1926 Act provides:

> This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this Act, even though such refund or credit was allowed prior to such date.

As contended by the Government in its brief in the *Pottstown Iron Co. case*, No. 113, October Term, 1930, a credit is *taken* when the tax is paid by application of that credit. This is done, we submit, either when the Collector makes entries in his records that the tax obligation is satisfied, or when he certifies to the Commissioner that this has been done. These acts necessarily precede the signing by the Commissioner of the schedule of refunds and credits. Therefore, the language of Section 1116 (c) indicates that under the 1926 Act a credit is not allowed upon the signing of that subsidiary schedule. But the signing of the schedule of overassessments necessarily precedes the act which constitutes the "taking of a credit." Thus the language of Section 1116 (c) of the 1926 Act supplies additional evidence that Congress regarded that a credit is *allowed* when the Commissioner signs the schedule of overassessments.

B. The decision of this Court in Girard Trust Company v. United States, 270 U. S. 163, supports this construction

The trial court, in the *Iron Cap Copper Co. case*, in commenting on the contention of the Government that the credit was allowed when the Commissioner signed the authorization to the Collector, said (*Iron Cap Copper Co.*, R. 35):

> The difficulty with this argument is that it ignores the decision of the Supreme Court of the United States in Girard Trust Co. in 270 U. S. 163, and of this court in Boston Buick Company *vs.* United States in 27 F. 2, 395.

In the *Girard Trust Co. case* the Commissioner signed a schedule of overassessments on December 9, 1922, on which appeared an overassessment in favor of the Girard Trust Company of $182,583.72 for the year 1920, and $107,372.36 for the year 1917, and transmitted the same to the Collector with the instructions appearing thereon. The Collector examined the taxpayer's account, applied $98,101.29 of the overassessment for the year 1920 as an abatement, credited $21.41 against taxes for other years, and reported $84,416.02 as an excess overpayment after making the credit. The $107,372.36 for the year 1917 was reported as an overpayment and was also reported as refundable. The authorization to the disbursing clerk to pay the amounts refundable was signed by the Commissioner on January 16, 1923. The checks covering

the amount of the refunds were mailed to the Girard Trust Co., together with checks for interest computed to December 9, 1922, on the theory that the refunds were allowed on the date on which the Commissioner signed the schedule of overassessments.

It was the contention of the Girard Trust Company that under Section 1324 (a) of the Revenue Act of 1921, it was entitled to interest to the date of *payment* of the refunds on the theory that the allowance was not made until the refund was paid. The Government contended that the refund was allowed on the date on which the Commissioner signed the schedule of overassessments. No question was raised as to interest on the $21.41 credited, and neither before the Court of Claims nor before this Court was the question discussed as to when a credit was allowed, and no distinction was drawn in the briefs of either party between the allowance of a credit and the allowance of a refund. This Court held that the refund was allowed upon the decision by competent authority that the payment should be made, and that this decision was made when the Commissioner signed the schedule of refunds and credits.

This Court there said that the findings and exhibits show that the course of business is that the Collector, on receiving from the Commissioner the schedule of overassessments examines his books and reports back to the Bureau the amount which

"should be credited" on taxes due and the amount to be refunded. This is not a correct statement of the practice shown to be in effect in the instant cases, for the reason that the Collector does not report the amount that "should" be credited and refunded. The certificate of the Collector in the *Girard Trust Co. case* is the same as the certificates found on Forms 7777 and 7777–A. The Collector reported in the *Girard Trust Co. case*, as appears from the record in that case (No. 137, Oct. Term, 1925, R. 8):

> The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated *have been applied* as abatements and credits on their accounts.
>
> The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein. (Italics ours.)

The only thing which the Collector indicated was the amount that appeared to be refundable. As to the credits, he reported not that they should be applied but that they "have been applied." The Court then said "this is examined by the Assistant Commissioner and then is delivered to the Commissioner, who makes it effective by his approval." We submit that this Court had under consideration only the question of refunds and not the question of credits, and that in stating that the Commissioner made "it effective by his approval," the

Court referred only to making effective the recommendation of the Collector that a certain amount was to be refunded. Had the Commissioner intended to approve credits made by the Collector, it is apparent that he would have made reference to credits and used language expressing approval. That this statement referred only to refunds and not to credits is indicated by the statement of this Court (p. 171):

> Until it reaches him [the Commissioner] and is approved by him the *refund* can not be made. (Italics ours.)

We submit that the *Girard Trust Co. case* supports the contention of the Government that there is a distinction between the time of the allowance of a credit and the time of the allowance of a refund, and that a credit is allowed when the Commissioner gives the direction to the Collector to make the credit.

Few courts have passed upon the precise question here presented. The Court of Claims has consistently held, in accord with the decisions below, that a credit is allowed when the Commissioner signs the schedule of refunds and credits. See, for example, *Kingan & Co., Inc.*, v. *United States*, decided October 20, 1930, and reported in Par. 1824 of 1930 Prentice-Hall Federal Tax Service. But see *Penn Smokeless Coal Company* v. *United States* (W. D. Pa.) 34 F. (2d) 205, *contra*. Apparently no other courts have passed on the question.

III

THIS CONSTRUCTION HAS BEEN ADOPTED FROM THE FIRST BY THE TREASURY REGULATIONS, AND CONGRESS HAS CONFIRMED IT BY REENACTMENT OF STATUTES WITH SIMILARLY WORDED PROVISIONS

Upon the enactment of Section 1324 (a) of the Revenue Act of 1921, which contained the first provision for interest on credits and refunds, the Treasury Department promulgated Regulations No. 62. Article 1040 of these Regulations provides in part:

> A claim for refund or credit is allowed within the meaning of the statute when the Commissioner approves the schedule in whole or in part, for transmission to the proper accounting officer for credit or refund.

Moreover, it is established that (*Iron Cap Copper Co.* R. 29):

> the bureau has uniformly[3] held that the date of the allowance of a credit is the date upon which the commissioner signs the schedule of overassessments and that all interest adjustments so far as made voluntarily by the bureau, have been made under this rule.

---

[3] The only lapse from this uniformity was during the four months' period when Treasury Decision 3850, C. B. V–1, p. 354, was in effect. Treasury Decision 3850 was published April 8, 1926, and contained a copy of the opinion in the *Girard Trust Co. case*, which was decided March 1, 1926. The Treasury Decision, apparently following the *dictum* in the *Girard Trust Co. case*, stated in substance that there was no distinction between the allowance of a credit

This Court has repeatedly held that great weight is to be given to the interpretation of an Act of Congress by the Department entrusted with its enforcement. See, for example, *United States* v. *Bank of North Carolina*, 6 Pet. 29; *United States* v. *Mo. Pac. R. Co.*, 278 U. S. 269.

This principle is peculiarly applicable to the instant situation. The construction urged by the Government is not in violation of any statute. It is reasonable. Many cases have been closed in accordance with this departmental regulation. Any other construction would work injustice to those who have accepted interest computations without objection.

Where a statute has received uniform construction by the administrative department entrusted with its enforcement and the statute is later reenacted in substantially the same language, Congress may be considered to have included this administrative construction in the reenactment. *National Lead Co.* v. *United States*, 252 U. S. 140. A recent restatement of this familiar principle may be found in *Brewster* v. *Gage*, 280 U. S. 237.

---

and refund. Treasury Decision 3919 (C. B. V–2, p. 209) published August 25, 1926, again set forth the opinion in the *Girard Trust Co. case*, revoked the earlier ruling and in substance stated that a refund was allowed on the date of approval of the schedule of refunds and credits by the Commissioner, and omitted all reference to allowance of credits. Apparently the first decision was a hurried and ill-considered interpretation of the effect of the opinion in the *Girard Trust Co. case.*

The statutes and regulations affording the basis for the application of this principle to the instant cases are the following:

By Section 1324 (a) of the Revenue Act of 1921 Congress provided:

> That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest should be allowed * * *.

The Treasury Department thereupon adopted Section 1040 of Regulations 62 (*infra*, p. 44).

By Section 1019 of the Revenue Act of 1924, Congress provided:

> Upon the allowance of a credit or refund of any internal-revenue tax * * * interest shall be allowed and paid * * *.

The Treasury Department then adopted Article 1371 of Regulations 65, which contained the following:

> A claim for credit or refund is "allowed" within the meaning of the statute when the Commissioner approved the schedule in whole or in part for transmission to the proper accounting officer for credit or refund.

When the *Girard Trust Co. case* was argued in this Court on January 14th and 15th, 1926, the question of the date of allowance of a claim for refund was submitted for determination. Congress by Section 1116 (b) (2) of the Revenue Act of 1926, effective February 26, 1926, provided:

> The term "date of the allowance of the refund" means in the case of any income, war-profits, or excess-profits tax, the first date on which the Commissioner signs the schedule of overassessments in respect thereof.

This was three days prior to the decision by the Court in the *Girard Trust Co. case* holding that refunds were allowed when the Commissioner signed the second schedule.

Not only did Congress approve the practice in the Bureau by the enactment of Section 1019 of the Revenue Act of 1924, but in the Act of 1926 it gave express approval of this practice after it was aware that in the *Girard Trust Co. case* the practice and interpretation of the Bureau had been challenged. Section 1116 of the Revenue Act of 1926 was repealed by Section 614 of the Revenue Act of 1928 because by that section the date of the allowance of a refund lost its significance, and interest on refunds was computed to a date 30 days before that of the refund check.

CONCLUSION

It is respectfully submitted that the decisions of the court below were erroneous and that its judgments should be reversed.

THOMAS D. THACHER,
Solicitor General.
CHARLES B. RUGG,
Assistant Attorney General.
CLAUDE R. BRANCH,
Special Assistant to the Attorney General.
CHARLES R. POLLARD,
BRADLEY B. GILMAN,
Attorneys.

C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.
RALPH E. SMITH,
Attorney,
Bureau of Internal Revenue.

DECEMBER, 1930.

APPENDIX A

Statutes and Regulations Involved

STATUTES

Revised Statutes, Sec. 3218 (U. S. C., Title 26, Sec. 147), provides in part:

> Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; * * *.

Revenue Act of 1918, c. 18, 40 Stat. 1057, 1083, 1085, 1145, provides in part:

> Sec. 250. (b) As soon as practicable after the return is filed, the Commissioner shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the installments shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the installments as recomputed, the excess so paid shall be credited against the subsequent installments; and if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of section 252. * * *

SEC. 252. That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," the Act of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," the Revenue Act of 1916, as amended, or the Revenue Act of 1917, it appears that an amount of income, war-profits, or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided*, That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer.

SEC. 1316. (a) That section 3220 of the Revised Statutes is hereby amended to read as follows:

"SEC. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered

against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section."

Revenue Act of 1921, c. 136, 42 Stat. 227, 264, 268, 316, provides in part:

SEC. 250 (b). (Same as Section 250 (b) of the Revenue Act of 1918, above quoted.)

SEC. 252. (Same as Section 252 of the Revenue Act of 1918, above quoted.)

SEC. 1324 (a). That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

Revenue Act of 1924, c. 234, 43 Stat. 253, 296, 301, 346 (U. S. C., Title 26, Secs. 1045, 1046, 1065, 153), provides in part:

> SEC. 271. As soon as practicable after the the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.
>
> SEC. 272. If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the excess shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the excess shall be credited or refunded as provided in section 281.
>
> * * * * *
>
> SEC. 281. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or any such Act as amended, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.
>
> * * * * *
>
> SEC. 1019. Upon the allowance of a credit or refund of any internal-revenue tax errone-

ously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

Revenue Act of 1926, c. 27, 44 Stat. 9, 55, 66, 119, provides in part:

SEC. 271. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 272. If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the excess shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the excess shall be credited or refunded as provided in section 284.

* * * * *

SEC. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other

purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

* * * * *

SEC. 1116. (a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount.

(b) As used in this section—

(1) The term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency under Title II or Title III of the Revenue Act of 1924 or of this Act;

(2) The term "date of the allowance of the refund" means, in the case of any income, war-profits, or excess-profits tax, the first date on which the Commissioner signs the schedule of overassessments in respect thereof.

(c) This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this Act, even though such refund or credit was allowed prior to such date.

REGULATIONS

Article 1040 of Regulations 62, promulgated under the Revenue Act of 1921, provides in part:

ART. 1040. *Interest on refunds and judgments.*—Section 1324 of the Act provides that after the passage of the Act interest in certain cases shall be paid on refunds or credits of internal revenue taxes paid under this or prior internal revenue acts to the date of the allowance of such refunds or credits at the rate of one-half of 1 per cent per month. A claim for refund or credit is allowed within the meaning of the statute when the Commissioner approves the schedule in whole or in part, for transmission to the proper accounting officer, for credit or refund. * * *

Article 1371 of Regulations 65, promulgated under the Revenue Act of 1924, provides in part:

ART. 1371. *Interest on refunds and credits.*—Section 1019 of the act provides that upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or any penalty collected without authority, or of any sum which was excessive or in any manner wrong-

fully collected, interest upon such credits or refund shall be paid at the rate of 6 per cent per annum. A claim for credit or refund is "allowed" within the meaning of the statute when the Commissioner approves the schedule in whole or in part for transmission to the proper accounting officer for credit or refund. * * *.

Article 1371 of Regulations 69, promulgated under the Revenue Act of 1926, provides in part:

ART. 1371. *Interest on refunds and credits.*—Section 1116 provides that upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest upon such credit or refund shall be paid at the rate of 6 per cent per annum. A refund is "allowed" within the meaning of section 1116 when the Commissioner first signs the schedule of overassessment covering the particular refund. * * *.

APPENDIX B

1. Schedule of Overassessments (Form 7805).
2. Schedule of Refunds and Credits (Form 7805–A).

U. S. GOVERNMENT PRINTING OFFICE: 1939

TREASURY DEPARTMENT
U. S. INTERNAL REVENUE SERVICE
FORM 7805
Form approved by Comptroller General
Feb. 5, 1923

IMMEDIATE

This schedule must be executed and all required steps taken without delay.

COMMISSIONER OF INTERNAL REVENUE.

SCHEDULE OF OVERASSESSMENTS
AND
ALLOWANCE OF ABATEMENTS, CREDITS, REFUNDS, AND RELATED CLAIMS, IF AN

INCOME TAX UNIT

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The returns of the taxpayers listed herein, together with their claims (if any) and appropriate supporting evidence, have been carefully examined and the tax liability of the respective taxpayers has been determined in accordance with the available facts and the law. The overassessments or reductions in tax liability appearing in column 4 are accordingly recommended for allowance.

Date MAR. 29, 1924.

-SIGNED- J. G. BRIGHT

Deputy Commissioner.

AUTHORIZATION OF COMMISSIONER

To the Collector..... *District of* MASSACHUSETTS

The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts of Overassessment" or "Notices of Adjustment of Refund" attached thereto.

You will immediately check such items against the accounts of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the appropriate entries in your accounts. (This applies only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column Refunds and Credits (Form 7805-A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an ap upon the taxpayer's account.

You will thereupon complete and certify this schedule and the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Re

Date MAR. 29, 1924

-SIGNED- D. H. BLAIR

C

Item No.	Certificate of Overassessment or Claim Number	Name and Address of Taxpayer	Overassessments or Reductions of Tax Liability (Amount)	List, Page, and Line, or Account Number	Taxable Year	Abatement (Amount)	Overpayment (Amount)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
6	241355	Iron Cap Copper Co.	180,322 66	May '21 P111-13	18	48,539 94	131,782 72
7	241467	Iron Cap Copper Co.	258 29	June '21 P100-19	19	258 29	

1930

SCHEDULE OF OVERASSESSMENTS

AND

ALLOWANCE OF ABATEMENTS, CREDITS, REFUNDS, AND RELATED CLAIMS, IF ANY

ORIGINAL

Voucher to General Accounting Office

Schedule No. IT-A-

Sheet 1 of 2 *sheets*

INCOME TAX UNIT

District of MASSACHUSETTS

AUTHORIZATION OF COMMISSIONER

MASSACHUSETTS

actions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the "Certificates hed thereto.

s of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated, ited by the condition of the taxpayers' accounts for the years involved.

, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of

column 12, and placed in column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an appropriate *memorandum* made

the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Revenue.

-SIGNED- D. H. BLAIR

Commissioner of Internal Revenue.

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date JULY 14, 1924

-SIGNED- M. E. NICHOLS

Collector ..... *District of* MASS.

ACCOUNTS UNIT

Noted and entered

INITIALS	DATE

(Entries to be made by the Collector)

	List, Page, and Line, or Account Number (5)	Taxable Year (6)	Abatement (Amount) (7)		Overpayment (Amount) (8)		Credit (Amount carried to Form 7805-A) (9)	Account Credited: List, Page, and Line (10)	Due Date of Items Against Which Credit Was Made (11)	Net Amount Refundable Carried to Form 7805-A (12)		Remarks (13)	
36	May '21 P111-13	18	48,539	94	131,782	72	See	Attached For Credits		28,850	83	"	"
29	June '21 P100-19	19	258	29								"	"

TREASURY DEPARTMENT
U. S. INTERNAL REVENUE SERVICE
Form 7805-A
Form approved by Comptroller General
Feb. 5, 1923

IMMEDIATE

This schedule must be executed and all required steps taken without delay.

COMMISSIONER OF INTERNAL REVENUE.

SCHEDULE OF REFUNDS AND CREDITS

ILLEGAL OR ERRONEOUS COLLECTIONS

INCOME TAX UNIT

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items hereon are relisted as they appeared for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit.

Date July 14, 1924.

(Signed) M. E. NICHOLS.

Collector, ... *District of* MASS.

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due.

Date AUG. 7, 1924.

(Signed) J. G. BRIGHT,

Deputy Commissioner.

To the Dis

The ite
able portions o
est, if any, li
be made in th

Date AU

Item No. (1)	Certificate of Overassessment or Claim Number (2)	Name and Address of Taxpayer (3)	Net Amount Refundable (4)	Amount Credited (5)	(Not to be used by Collector) Interest Accrued (6)	(Not to be used by Collector) Total Refundable (7)	Date of Final Payments of Accounts from which Credits were Transferred and Overpayments Found (8)
6	241355	Iron Cap Copper Co.	28850 83	102931 89		28850 83	12-17-19

SCHEDULE OF REFUNDS AND CREDITS

ORIGINAL
Voucher to General Accounting Office

Schedule No. IT - R - 9751

Sheet 1 of ..... *Sheets.*

..... *Dist. of* MASS.

D. C. Voucher No. 184

ILLEGAL OR ERRONEOUS COLLECTIONS

INCOME TAX UNIT

UNIT	NOTATIONS	DATE
A & C	Hz	8-14-24

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due.

Date AUG. 7, 1924.

(Signed) J. G. BRIGHT,

Deputy Commissioner.

AUTHORIZATION OF COMMISSIONER

To the Disbursing Clerk, Treasury Department:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due. Payment may, therefore, be made in the amounts shown in column 7.

Date AUG. 7, 1924.

(Signed) D. H. BLAIR,

Commissioner of Internal Revenue.

Amount Credited (5)	(Not to be used by Collector) Interest Accrued (6)	(Not to be used by Collector) Total Refundable (7)	Date of Final Payments of Accounts from which Credits were Transferred and Overpayments Found (8)	(Not to be used by Collector) Refunding Taxes Illegally Collected 1925 and Prior Years (9)	19..... (10)	19..... (11)	Paid by Disbursing Clerk, Treas. Dept., by Checks Dated Aug. 21, 1924 Numbered as Follows: (12)	Remarks (13)
102931 89		28850 83	12-17-19	28850 83			470668	

24620—30. (Face p. 46.) No. 2

FILE COPY

MAR 8 19

In the

Supreme Court of the United States.

October Term, 1929.

No. 42

UNITED STATES OF AMERICA, Petitioner,

v.

BOSTON BUICK COMPANY.

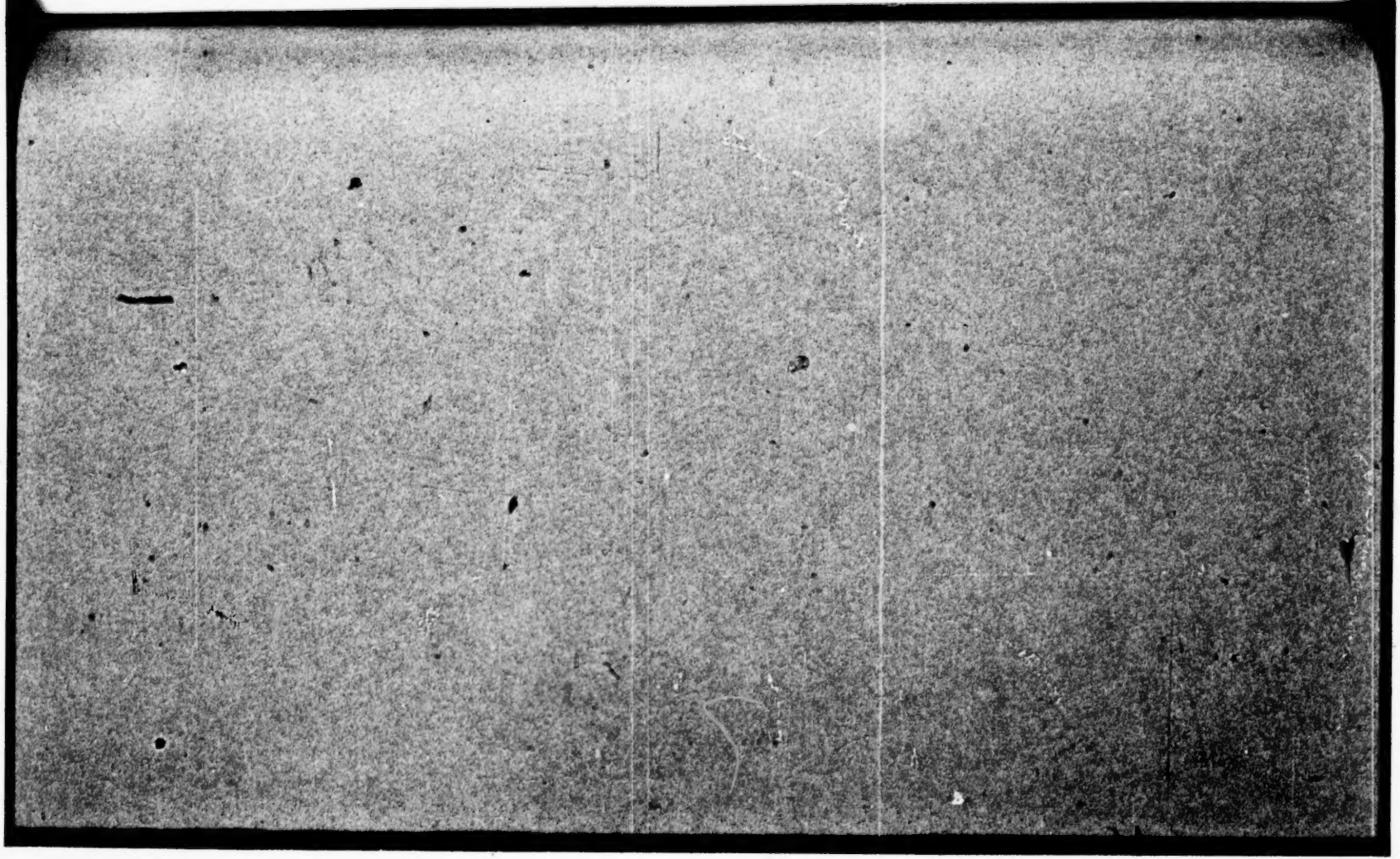
BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ROBERT N. MILLER,

CHARLES W. MULCAHY,

Attorney for Respondent.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.



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In the

Supreme Court of the United States.

OCTOBER TERM, 1929.

No. 632.

UNITED STATES OF AMERICA, PETITIONER,

v.

BOSTON BUICK COMPANY.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion of the United States Circuit Court of Appeals for the First Circuit (R. 22-26) is reported in 35 F. (2d) 560.

The opinion of the District Court for the District of Massachusetts (R. 15-18) is reported in 27 F. (2d) 395.

JURISDICTION.

The judgment of the United States Circuit Court of Appeals for the First Circuit was entered on November 5, 1929 (R. 22-26).

The jurisdiction of this court rests upon the provisions of section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Statement of the Case.

Prior to the passage of the Revenue Act of 1924, *i.e.*, on March 14, 1924, the Commissioner of Internal Revenue determined that an overassessment had been made with respect to respondent's taxes for the year 1918, and forwarded to the Collector a "Schedule of Overassessments," directing the Collector to examine the taxpayer's account and determine whether the amount of such overassessment should be abated, and if any part of the overassessment was found to be an overpayment, to examine all accounts of taxpayer for other years and apply the overpayment as a credit against taxes, if any for such other years, and to thereupon complete and certify such schedule, together with another schedule, entitled "Schedule of Refunds and Credits" (Form 7805-A), and return the necessary copies of each to the Commissioner. Each of these schedules called for a certification by the Collector to the Commissioner with respect to credits as well as refunds (Ex. A, R. 8).

Subsequent to the passage of the Revenue Act of 1924, *i.e.*, on July 11, 1924, the Collector acted upon said schedules, ascertained from an examination of taxpayer's accounts that the total amount of said overassessment constituted an overpayment, certified to the Commissioner on Form 7805-A (Ex. B, R. 8) that "an examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions in tax liability subject to refund or credit," and returned both schedules to the Commissioner (R. 8, Ex. B).

Thereafter, on July 31, 1924, the Deputy Commissioner certified to the Commissioner with reference to the refundable portions of the overassessments appearing on said schedule and accrued interest, if any, and the Commissioner authorized the Disbursing Clerk of the Treasury Department to pay the same (R. 8, Ex. B). There was no amount

refundable to respondent, as the entire amount of the overassessment in its favor was applied as credits against taxes due for other years (R. 8, 9). The attention of the court is directed to the fact that, although the photostatic copy of Exhibit B (R. 8) has failed to reproduce the signatures of the Deputy Commissioner and Commissioner, the respective certificates were, in fact, signed by them, as appears in the statement of the case in the Government's petition, at page 3, and as was orally stated by the Government's counsel to the court below during the argument of the case.

Question Presented.

The sole question presented is—

Whether interest on the credits should be computed under section 1324 (a) of the Revenue Act of 1921 or under section 1019 of the Revenue Act of 1924, which question depends, in turn, upon whether the credits were "allowed" before or after June 2, 1924, the effective date of the Revenue Act of 1924.

Statutes Involved.

Revenue Act of 1921; 42 Stat. 316.

"Sec. 1324 (a). That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not

paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term 'additional assessment' as used in this section means a further assessment for a tax of the same character previously paid in part."

Revenue Act of 1924; 43 Stat. 253.

"Sec. 1019. Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term 'additional assessment' as used in this section means a further assessment for a tax of the same character previously paid in part."

Argument.

It has been decided by this court in the cases of *Blair* v. *United States, ex rel. Birkenstock et al.*, 271 U.S. 348, *and United States* v. *Magnolia Petroleum Co.*, 276 U.S. 160, that the law in force at the time of the *allowance* of a refund governed the amount of interest payable.

The first case involving the question as to when the date of "allowance" occurred was *Girard Trust Co.* v. *United States*, 270 U.S. 163. In that case the Government contended, as it does here, that the date of allowance was the date when the Commissioner first signed the Schedule of Overassessments forwarded to the Collector. The Regulations at that time provided as follows:

"A claim for refund or credit is allowed within the meaning of the statute when the Commissioner approves the schedule in whole or in part for transmission to the proper accounting officer for credit or refund."

This court overruled the Government's contention and decided that this regulation was invalid. In its opinion this court said (pp. 170, 171):

"We can not concur, however, in the view of the Treasury Department that the date of the allowance of the claim as intended by the statute is the date when the Commissioner first decides that there has been an overassessment and sends upon a proper form his decision to the collector of internal revenue who made the collection and keeps the account with the taxpayer. The findings and the exhibits show that the course of business is that the collector, on receiving from the Commissioner the schedule as to the overassessment, examines his books and reports back to the Bureau the *amount which should be credited* on taxes and the *amount to be refunded;* that this is examined by the Assistant Commissioner and then is delivered to the Commissioner, *who makes it effective by his approval.* Until it reaches him and is approved by him, the refund can not be paid. This, we think, is the real date of allowance. *Until that time the exact amount of the refund is not fixed finally by competent authority.* This date would seem to be just as certain and convenient from an administrative standpoint as that of the original decision of the Commissioner, and *it is certainly more in conformity to the general purpose of Congress to relieve the overassessed taxpayer by paying compensatory interest on money unjustly taken and kept by the Government.*" (Italics supplied.)

> Again (p. 170): "The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and that a refund *or credit* should be granted and when he has made that decision finally, he has allowed the claim for the refund *or credit* of the taxes paid within the meaning of the Section." (Italics supplied.)

It should be noted that the form of the Schedule of Overassessments in the instant case is substantially the same as that before this court in the *Girard Trust Company* case, and is identical with the one involved in *Blair* v. *United States, ex. rel. Birkenstock*, in which the *Girard Trust Company* case was followed.

In the instant case the Government claims that, while the above case settles the question of the date of allowance of a refund, it does not apply to the case of a *credit*. The contention of the respondent is that it applies with equal force to a credit as well as a refund.

There is no doubt that when the Commissioner signed the Schedule of Overassessments on March 14, 1924, it constituted his decision that an *overassessment* had been made. It is also equally clear that at that time the Commissioner did not decide that either a *refund* or *credit* should be granted. In both these respects the facts in the *Girard Trust Company* case and in the instant case are identical.

It is plain from the instructions of the Commissioner to the Collector appearing on the Schedule of Overassessments (Ex. A, R. 8) that the Commissioner did not know at the time he signed such schedule whether the overassessment would result in either a refund or a credit. It will be noted that the instructions to the Collector required him first to check the *overassessment* against the account of the taxpayer and determine whether there had been an *overpayment*. The instructions then provided as follows:

"*If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts.* Such credits will be entered in Column 9, and placed in Column 5 of a subsidiary Schedule of Refunds and Credits (Form 7805-A).

"The balance, if any, of the overpayment will be entered in Column 12, and placed in Column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an appropriate memorandum made upon the taxpayer's accounts.

"You will thereupon complete and certify this schedule and the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Revenue." (Italics supplied.)

An item appearing in the Schedule of Overassessments might result in a refund or in a credit, or might not result in either. If a particular item is later found to result in a refund, it is settled by the *Girard Trust Company* case, *supra*, that allowance of the same was not made on March 14, when the Commissioner signed the Schedule of Overassessments, and it would seem that the Government must take the position that the question of whether a particular item appearing therein is "allowed" when the Commissioner signed the schedule cannot be determined at that time, but must await the ultimate finding by another official of certain facts not then known to the Commissioner and which would not, in the normal course of events, be ascertained for several months thereafter. The statement of this position demonstrates its unsoundness. It is clearly open to the same objections stated by the court in *Girard Trust Company* v. *United States*, *supra*, at p. 171, that "the exact amount of the refund is not fixed finally by competent authority" and that it is not "in conformity to the

general purpose of Congress to relieve the overassessed taxpayer by paying compensatory interest on money unjustly taken and kept by the Government."

The question here presented was before the Court of Claims in the case of *Swift & Co.* v. *United States* (unreported, May 6, 1929). In that case the court held as follows:

> "It should be observed that the Government made the same contention, on the point under discussion, in the *Girard Trust Company case*. It is true that only refunds were directly involved in the *Girard Trust Company case*, but the court seems to have placed credits and refunds on the same footing, so far as the date of allowance is concerned. In defining what constitutes an allowance of a claim for refund or credit, the court stated:
>
> " 'The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and that a refund or credit should be granted, and when he has made that decision *finally*, he has allowed the claim for the refund or credit of the taxes paid within the meaning of the section.' (Italics ours.)
>
> "The Government in its brief presented that case on the theory that no difference existed between a credit and a claim for refund in the matter of the date of the allowance. It is stated in said brief:
>
> " '. . . and the date of the allowance of the claim, that is, the date of adjudication of his right to *credit* or *refund*, remains the date of the approval of the original schedule.'
>
> "The schedule is nothing more nor less than a statement of credits as well as refunds found by the collector to be due the taxpayers named therein. The opinion in the *Girard Trust Company case*, *supra*, referring to the collector's report as to the amount which should

be credited on taxes due for other years, and the amount to be refunded, states (p. 171):

"'that this is examined by the assistant Commissioner and then is delivered to the Commissioner, who *makes it effective by his approval.*' (Our italics.)

"The commissioner 'is the final judge in the administrative branch of the Government to decide . . . that a refund or credit should be granted.' No other administrative officer has such authority. The commissioner's decision that there has been an overassessment is one thing; the determination that there has been an overpayment is quite another. This can not be determined by the commissioner until he is informed by the collector what part, if any, of the overassessment had been paid, and what part, if any, had been abated. . . .

"We have reached the conclusion that the credit involved herein was allowed within the meaning of the statute when the commissioner signed the schedule of refunds and credits as reported by the collector, which was September 6, 1923, and within four years from the filing of the second claim for refund."

There is no decision by any Circuit Court of Appeals in conflict with the decision in the instant case.

Attention has been called in petitioner's brief to the decision in the case of *Penn Smokeless Coal Co.* v. *United States*, in the District Court for the Western District of Pennsylvania, 34 F. (2d) 205, in which the court reached an opposite conclusion. That decision must be considered of very questionable value, however, on account of the unfortunate error into which the court fell, as pointed out by the Court of Claims in *Swift & Co.* v. *United States*, *supra*, in the following language:

"It is the contention of the Government that the credit was *allowed* on February 9, 1923, when the Com-

missioner of Internal Revenue certified the overassessment to the collector. This contention seems to be based on the decision in the *Penn Smokeless Coal Co.* v. *United States*, in the District Court of the United States for the Western District of Pennsylvania, decided January 3, 1929. It will be noticed that the real controversy in that case was over the question as to when the credit was 'taken.' It was agreed between counsel, as shown by the briefs, that 'a credit is allowed when the Commissioner approves the schedule of overassessments for transmission to the proper accounting officer for credit.' That point was therefore not the subject of argument. We think counsel were in error in agreeing that such was the correct principle. At any rate, it should be noticed that the court itself fell into an unfortunate error in its discussion of the case. It is stated:

" 'In *Girard Trust Company* v. *United States, supra* (270 U.S. 163), the court, in the opinion of Mr. Chief Justice Taft, laid down a rule as follows: "*A claim for refund or credit is allowed within the meaning of the statute when the Commissioner approves the schedule in whole or in part for transmission to the proper accounting officer for credit or refund.*" . . . Applying the rule laid down in *Girard Trust Company* v. *United States* to the actual procedure in the Bureau of Internal Revenue, the credit to the plaintiff was allowed when the Commissioner approved the schedule of overassessments on January 13, 1926, for transmission to the collector.' (Italics ours.)

"The matter quoted above was not a rule laid down by Chief Justice Taft. It was a reference by the Chief Justice to a Treasury regulation and was cited only for the purpose of expressing his emphatic disapproval of the principle embodied therein, which he did in the following language:

"'We can not concur, however, in the view of the Treasury Department that the date of the allowance of the claim as intended by the statute is the date when the commissioner first decides that there has been an overassessment and sends upon a proper form his decision to the collector of internal revenue who made the collection and keeps the account with the taxpayer.'

"Inasmuch as the decision in the *Penn Smokeless Coal Co. case* is based, in a large measure, upon a palpably erroneous premise it must be considered as of questionable value as a precedent in the present case."

No further criticism of the *Penn Smokeless Coal Co.* case need be made except to point out the fallacy in the statement of the court that "the order upon the Collector for the credit, made in the schedule of overassessments, is just as effective in allowance of the credit as the order upon the Disbursing Clerk for the payment of the refund from the Treasury."

It must be apparent that these acts are fundamentally different in the following vital respects:

(1) At the time the order is made upon the Disbursing Clerk for the payment of the refund (to use the words of this court in *Girard Trust Co.* v. *United States, supra*), "the exact amount of the refund" has been "fixed finally by competent authority." On the other hand, at the time the authorization to the Collector is given, as contained in the Schedule of Overassessments, the exact amount of the refund or credit has not been fixed finally. Indeed, it has not then been determined whether the *overassessment* will result in any *credit* or *refund* at all.

(2) The order upon the Disbursing Clerk is an *unconditional* order for the payment of money, not dependent upon any contingency whatever. The instructions to the Collector, on the contrary, require him to make a preliminary finding, after examination of the taxpayer's records, as to

whether there has been an *overpayment*, and to report his findings back to the Commissioner.

The principal reason advanced in petitioner's brief for the granting of a writ of certiorari appears to be that the certificate which the Commissioner signed to the Disbursing Clerk after the schedules had been returned by the Collector covered only refunds, together with such interest as may have accrued on either refunds or credits, and had no reference to credits as such, and that, therefore, the credits appearing on such schedules were not thereby allowed by the Commissioner; and the argument is made that since, in certain cases where no refunds are to be made and no interest is payable, the Schedule of Refunds and Credits (Form 7805-A) is not signed by the Commissioner after its return by the Collector, the decision of the court below would result in the liability of taxpayers being reduced by the action of the Collector in the application of credits prior to, and, in some instances, without any allowance by the Commissioner.

It is submitted that the above reasoning takes too literal a view of the matter. The important thing is the *approval* by the Commissioner. As was stated by this court in the *Girard Trust Company* case, *supra*, the schedule upon its return from the Collector "is examined by the Assistant Commissioner and then is delivered to the Commissioner, who makes it effective by his approval." That such approval was given necessarily follows from the entire course of procedure in this case—even though the authorization to the Disbursing Clerk expressly referred only to refunds. The Collector's action in entering the credit upon his books was tentative only and subject to the subsequent approval of the Commissioner. Petitioner has called attention to the language of the "Certificate of Collector" on Form 7805, (Ex. A, R. 8), which states that the amounts indicated have been "applied" as credits upon the respective accounts,

but it will be noted that the "Certificate of Collector" on Form 7805-A (Ex. B, R. 8) states the amounts listed to be "*subject* to refund or credit." Under the facts in this case it is plain that the entries made by the Collector in his books do not constitute a final allowance. He is required to report back to the Commissioner, after he has ascertained the facts concerning the taxpayer's account, the amount of overpayment, amount of credit, and the due dates of the items against which credits were made (Ex. A, R. 8). It cannot be assumed that this is an empty formality. The only reasonable interpretation of this procedure is that this report is required for the purpose of enabling the Commissioner to determine the correctness of the Collector's findings before giving his final approval. For example, the propriety of crediting an overpayment of taxes for one year against an unpaid assessment for another year depends upon whether the unpaid assessment is legally collectible, in whole or in part. The determination of that question can only be made by the Commissioner, and, being judicial in its nature, cannot be delegated to the Collector.

Conclusion.

It is respectfully submitted that the question here sought to be reviewed has been settled by the decision of this court in *Girard Trust Company* v. *United States*, *supra*, that the decision of the Circuit Court of Appeals was in conformity with that decision, and that the petition for a writ of certiorari should be denied.

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Boston, Mass.

FILE COPY

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In the

Supreme Court of the United States.

October Term, 1930.

No. 42.

UNITED STATES OF AMERICA, Petitioner,

v.

BOSTON BUICK COMPANY, Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

BRIEF FOR RESPONDENT.

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In the

Supreme Court of the United States.

OCTOBER TERM, 1930.

No. 42.

UNITED STATES OF AMERICA, PETITIONER,

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BOSTON BUICK COMPANY, RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENT.

OPINIONS BELOW.

The opinion of the United States Circuit Court of Appeals for the First Circuit (R. 19-23) is reported in 35 F. (2d) 560.

The opinion of the District Court for the District of Massachusetts (R. 14-16) is reported in 27 F. (2d) 395.

JURISDICTION.

The judgment of the United States Circuit Court of Appeals for the First Circuit was entered on November 5, 1929 (R. 19-23).

The jurisdiction of this court rests upon the provisions of section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

A petition for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit was filed by the petitioner on February 5, 1930, and was granted by this court on March 17, 1930 (R. 24).

STATEMENT OF THE CASE.

This is an action to recover interest upon an overpayment of taxes applied as a credit against taxes due for other years.

In December, 1923, respondent made application for special assessment of its 1918 excess-profits tax; on February 26, 1924, the Commissioner allowed said application and determined the correct tax liability of respondent to be $23,181.08 less than the amount originally assessed (R. 5). On March 14, 1924, this overassessment was listed by the Commissioner upon a schedule of overassessments (Ex. A, R. 6-7) and forwarded to the Collector at Boston (R. 5). This schedule directed the Collector to examine the taxpayer's account and determine whether the amount of such overassessment should be abated, and, if any part of the overassessment was found to be an *overpayment*, to examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, for such other periods; the Collector was also directed to enter in the appropriate columns of the schedule the amount of such credits and the refundable balance, if any, and to certify such schedule and another schedule of refunds and credits (Ex. B, R. 8-9), upon

which similar entries were to be made, and return copies of each to the Commissioner.

On April 15, 1924, the respondent filed with the Commissioner a claim for credit of $15,903.99 against a tax instalment due on that date, and for the refund of $7,277.09, being the balance of said overassessment, and, on July 3, 1924, filed a claim for credit of $7,277.09, theretofore claimed as a refund, against an instalment of tax due on July 15, 1924 (R. 5).

On July 11, 1924, the Collector acted upon said schedules, determined the entire amount of the overassessment to be an overpayment, certified and returned both schedules to the Commissioner, and entered upon his books a credit of $7,277.09 against outstanding taxes for the year 1919 and a credit of $15,903.99 against a tax instalment due on April 15, 1924; thereafter, on November 11, 1924, the credit of $7,277.09 was taken away from respondent's account for the year 1919 and applied as a credit against an instalment of tax due on July 15, 1924 (R. 5).

On July 31, 1924, the Deputy Commissioner certified to the Commissioner with reference to the refundable portions of the overassessments appearing on the Schedule of Refunds and Credits, and accrued interest, if any, and the Commissioner authorized the Disbursing Clerk to pay the same (Ex. B, R. 8).*

*Although the Schedule of Refunds and Credits as printed at page 8 of the record does not disclose the signatures of the Commissioner and Deputy Commissioner, it is agreed that the certificates appearing upon this schedule were, in fact, signed by these officials.

QUESTION PRESENTED.

The sole question presented is—

Whether interest on the credits should be computed under section 1324 (a) of the Revenue Act of 1921 or under section 1019 of the Revenue Act of 1924, which question depends, in turn, upon whether the credits were "allowed" before or after June 2, 1924, the effective date of the Revenue Act of 1924.

STATUTES INVOLVED.

Revenue Act of 1921.

"Sec. 252. That if, upon examination of any return of income made pursuant to * * * the Revenue Act of 1917 or the Revenue Act of 1918, it appears that an amount of income, war-profits, or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of Section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits, or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer."

"Sec. 1324 (a). That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from

the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. * * *"

Revenue Act of 1924.

"Sec. 281 (a). Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by * * * the Revenue Act of 1917, the Revenue Act of 1918, * * * the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer."

"Sec. 1019. Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, * * *"

SUMMARY OF ARGUMENT.

1. The allowance of a credit does not take place when the Commissioner signs the Schedule of Overassessment for transmission to the Collector. *Girard Trust Co.* v. *United States*, 270 U.S. 163.

   (*a*) At that time the amount of the credit has not been determined nor has it been determined that

the overassessment will result in any credit whatever.

(*b*) The Commissioner has no authority to allow a credit prior to a determination that there had been an overpayment which cannot be ascertained until he has received back the Collector's report.

(*c*) The date of allowance of the credits in this case could not have been March 14, 1924, the date when the Commissioner first signed the Schedule of Overassessments, inasmuch as the instalments against which the overpayment was later credited were not then due.

2. The allowance of the credit took place on July 31, 1924, when the Commissioner approved the Schedule of Refunds and Credits.

(*a*) This construction creates no administrative difficulties.

(*b*) Contrary departmental construction should not control the plain meaning of the law.

3. Significance of July 11, 1924, the date when the Collector acted upon the schedule.

ARGUMENT.

It has been decided by this court in the cases of *Blair* v. *United States, ex rel. Birkenstock et al.*, 271 U.S. 348, *and United States* v. *Magnolia Petroleum Co.*, 276 U.S. 160, that the law in force at the time of the *allowance* of a refund governed the amount of interest payable. The same rule would obviously hold true in the case of a credit.

1. The allowance of a credit does not take place when the Commissioner signs the Schedule of Overassessments for transmission to the Collector.

The first case involving the question as to when the date of "allowance" occurred was *Girard Trust Co.* v. *United States*, 270 U.S. 163. In that case the Government contended, as it does here, that the date of allowance was the date when the Commissioner first signed the Schedule of Overassessments forwarded to the Collector. The Regulations at that time provided as follows:

> "A claim for refund or credit is allowed within the meaning of the statute when the Commissioner approves the schedule in whole or in part for transmission to the proper accounting officer for credit or refund."

This court overruled the Government's contention and decided that this regulation was invalid. In its opinion this court said (pp. 170, 171):

> "We can not concur, however, in the view of the Treasury Department that the date of the allowance of the claim as intended by the statute is the date when the Commissioner first decides that there has been an overassessment and sends upon a proper form his decision to the collector of internal revenue who made the collection and keeps the account with the taxpayer. The findings and the exhibits show that the course of business is that the collector, on receiving from the Commissioner the schedule as to the overassessment, examines his books and reports back to the Bureau the

*amount which should be credited** on taxes and the *amount to be refunded;* that this is examined by the Assistant Commissioner and then is delivered to the Commissioner, *who makes it effective by his approval.* Until it reaches him and is approved by him, the refund can not be paid. This, we think, is the real date of allowance. *Until that time the exact amount of the refund is not fixed finally by competent authority.* This date would seem to be just as certain and convenient from an administrative standpoint as that of the original decision of the Commissioner, and *it is certainly more in conformity to the general purpose of Congress to relieve the overassessed taxpayer by paying compensatory interest on money unjustly taken and kept by the Government.*" (Italics supplied.)

Again (p. 170): "The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and that a refund *or credit* should be granted and when he has made that decision finally, he has allowed the claim for the refund *or credit* of the taxes paid within the meaning of the Section." (Italics supplied.)

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*The Government argues that this is an incorrect statement by the court and refers to the Collector's certificate on the Schedule of Overassessments. This argument entirely ignores the Certificate of Collector appearing on Schedule of Refunds and Credits (R. 8), which states that "An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability *subject* to refund or credit." (Italics supplied.)

The form of the Schedule of Overassessments in the instant case is substantially the same as that before this court in the *Girard Trust Company* case, and is identical with the one involved in *Blair* v. *United States, ex rel. Birkenstock,* in which the *Girard Trust Company* case was followed.

(a) At the time the Commissioner signed the Schedule of Overassessments, the amount of the credit had not been determined, nor had it been determined that the overassessment would result in any credit whatever

There is no doubt that when the Commissioner signed the Schedule of Overassessments on May 14, 1924, it constituted his decision that an *overassessment* had been made. It is also equally clear that at that time the Commissioner did not decide that either a *refund* or *credit* should be granted. In both these respects the facts in the *Girard Trust Company* case and in the instant case are identical.

It is plain from the instructions of the Commissioner to the Collector appearing on the Schedule of Overassessments (Ex. A, R. 6) that the Commissioner did not know at the time he signed such schedule whether the overassessment would result in either a refund or a credit. It will be noted that the instructions to the Collector required him first to check the *overassessment* against the account of the taxpayer and determine whether there had been an *overpayment.* The instructions then provided as follows:

> "*If any part of any such item is found to be an overpayment,* you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, mak-

ing the appropriate entries in your accounts. Such credits will be entered in Column 9, and placed in Column 5 of a subsidiary Schedule of Refunds and Credits (Form 7805-A).

"The balance, if any, of the overpayment will be entered in Column 12, and placed in Column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an appropriate memorandum made upon the taxpayer's accounts.

"You will thereupon complete and certify this schedule and the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Revenue." (Italics supplied.)

An item appearing in the Schedule of Overassessments might result in a refund or in a credit, or might not result in either. If a particular item is later found to result in a refund, it is settled by the *Girard Trust Company* case that allowance of the same was not made on March 14, when the Commissioner signed the Schedule of Overassessments, and, if the position of the Government is correct, the question of whether a particular item appearing therein is "allowed" when the Commissioner signs the schedule cannot be determined at that time, but must await the ultimate finding by another official of certain facts not then known to the Commissioner and which would not, in the normal course of events, be ascertained for several months thereafter. This is clearly open to the same objections stated by the court in *Girard Trust Company* case that "the exact amount of the refund is not fixed finally by competent authority" and that it is not "in conformity to the general purpose of Congress to re-

lieve the overassessed taxpayer by paying compensatory interest on money unjustly taken and kept by the Government."

(b) The Commissioner had no authority to allow a credit prior to a determination that there had been an overpayment, which could not be ascertained until he had received back the Collector's report.

The attention of the court is directed to the fact that under both section 252 of the Revenue Act of 1921 and section 281 of the Revenue Act of 1924 the allowance of credits and refunds is limited to cases where there have been *overpayments*. Authority was first given to the Commissioner to allow an overpayment of taxes for one year to be credited on taxes due for other years by section 252 of the Revenue Act of 1918. That section was re-enacted verbatim in section 252 of the Revenue Act of 1921 and without material change in section 281 of the Revenue Act of 1924. The authority granted by the 1918 and 1921 Acts was in cases where "it appears that an amount of income, war-profits or excess profits tax has been paid in excess of that properly due," and by the 1924 Act in cases where "there has been an overpayment of any income, war-profits or excess profits tax." The allowance of a credit, therefore, under these Acts necessarily involved a determination that there had in fact been an overpayment. That fact had not been determined when the Commissioner signed the Schedule of Overassessments for transmission to the Collector. He had no knowledge of the same until he received back the report of the Collector, and it is submitted that until that time neither a refund nor a credit could have been allowed by him.

(c) The date of allowance of the credits here could not have been March 14, 1924, the date when the Commissioner signed the Schedule of Overassessments, as the instalments against which the overpayment was credited were not then due.

The sections of the law above referred to further required that the amount of such overpayment "shall be credited against any income, war-profits, or excess profits tax, or instalment thereof, then due from the taxpayer, and any balance of such excess shall be immediately refunded to the taxpayer." The inclusion of the phrase "or instalment thereof" and the qualification of "due" by the word "then" plainly indicates that the word "due" was used in this section as meaning *due and payable*, as distinguished from due and owing.

It will be noted that, in this case, if the date of allowance was March 14, 1924, when the Commissioner first signed the Schedule of Overassessments for transmission to the Collector, the instalments of tax against which the overpayment was credited were not then due. The facts are (R. 5) that on April 15, 1924, respondent filed a claim asking that the overassessment of $23,181.08 be applied as a credit in the amount of $15,903.99 against an instalment due on that date and that the balance of $7,277.09 be refunded; and on July 3, 1924, filed a claim for credit of $7,277.09, theretofore claimed as a refund, against an instalment due on July 15, 1924. The Collector, on July 11, 1924, entered upon his books the credit of $15,903.99 against the April 15, 1924, instalment and applied the balance of $7,277.09 as a credit against 1919 taxes then outstanding; thereafter the credit of $7,277.09 was taken away by the Collector from

the respondent's account for 1919 and applied as a credit against an instalment due on July 15, 1924.

It will not be questioned that it has been the uniform practice of the Government to apply overpayments as credits against taxes or instalments due at the time of the Collector's action upon the schedules, even though such taxes or instalments, as here, were not due at the time the Commissioner first signed the schedule. But the position taken by the Government in this case is clearly inconsistent with this practice. If the allowance of a credit takes place when the Commissioner first signs the schedule, no credit can be allowed against taxes or instalments not then due, and the overpayment must "be refunded immediately to the taxpayer," in accordance with the express requirement of the statute.

Such a construction would not only add to the difficulties of the Government bookkeeping and accounting and overturn long-continued departmental procedure, but would also result in a situation plainly prejudicial to the interests of the Government.

A much more reasonable interpretation is the one adopted by the court below, namely, that the allowance of a credit does not take place until the Commissioner has received the necessary information from the Collector as to the state of the taxpayer's account and is thus in a position to finally determine *the exact amount of the refund or credit*. As was stated by the court below (R. 22):

> "It would be a strained construction of the Commissioner's directions to the Collector to hold that he thereby allowed and approved something of which he had no knowledge and could have none

until a report was received back from the Collector."

The Government's brief points out that the statute relating to interest refers in the same sentence to the allowance of both credits and refunds and argues that the same construction should be given to the word "allowance" in each case. With this the respondent is entirely in accord. They were treated upon the same footing by this court in its opinion in the *Girard Trust Company* case. It is believed, however, that the contention of the Government that a credit is allowed when the Commissioner first signs the Schedule of Overassessments is in conflict with this reasoning.

When the *Girard Trust Company* case was before this court, it would have been entirely possible for the court to have adopted the view that, since the taxpayer's account had a definite, fixed status (although unknown to the Commissioner) at the time the Commissioner signed the Schedule of Overassessments, and the law specifically required the amount of overpayment, if any, to be immediately refunded to the taxpayer, no discretion being left with the Commissioner in this regard, so that the refund necessarily followed the allowance of the overassessment, the date of allowance of the overassessment was the date of allowance of the refund. The court, however, did not take that view. On the contrary, it decided that the allowance of the overassessment did not constitute an allowance of the refund, and that the refund was not allowed within the meaning of the statute until it had also been decided by the Commissioner that a *refund* should be granted and the exact amount of the refund fixed finally by him.

The interpretation which the Government urges for the word "allowance" as applied to credits is plainly in conflict with its construction by this court in the above case.

2. The allowance took place on July 31, 1924, when the Commissioner approved the Schedule of Refunds and Credits.

The principal reason advanced by the Government in support of its contention that the allowance does not take place at that time is that the authorization to the Disbursing Clerk which the Commissioner signs relates only to refunds and interest upon refunds and credits, and makes no reference to credits, as such.

It is submitted that the above reasoning takes too literal a view of the matter. The important thing is the *approval* by the Commissioner. As was stated by this court in the *Girard Trust Company* case, the schedule upon its return from the Collector "is examined by the Assistant Commissioner and then is delivered to the Commissioner, who makes it effective by his approval." That such approval was given necessarily follows from the entire course of procedure in this case—even though the authorization to the Disbursing Clerk expressly referred only to refunds. The Collector's action in entering the credit upon his books was tentative only and subject to the subsequent approval of the Commissioner. It is plain that the entries made by the Collector in his books do not constitute a final allowance. He is required to report back to the Commissioner, after he has ascertained the facts concerning the taxpayer's account, whether there has been an overpayment, the amount of overpayment, amount of credit, and the due dates of the items against which credits were made (R.

6). It cannot be assumed that this is an empty formality. The only reasonable interpretation of this procedure is that such report is required for the purpose of enabling the Commissioner to determine the correctness of the Collector's findings before giving his final approval. For example, the propriety of crediting an overpayment of taxes for one year against an unpaid assessment for another year depends upon whether the unpaid assessment is legally collectible, in whole or in part. The determination of that question can only be made by the Commissioner, and, being judicial in character, cannot be delegated to the Collector.

The matter is well summed up by the Court of Claims in *Pottstown Iron Co.* v. *United States*, 40 Fed. (2d) 142, by the following statement in its opinion:

> "In these cases involving interest upon credits, the defendant argues that when the commissioner signs the schedule of refunds and credits he only authorizes the disbursing clerk to pay the amount of tax shown to be refundable and the interest upon any refund or credit, and that this can not be regarded as the taking of a credit. We think by this action the commissioner does more than merely authorize the payment of the refund and the interest. He approves the report of the collector, finally determines that there has been an overpayment, and makes effective a credit of that overpayment against the additional tax for another year."

In addition to the decision in the instant case, the following cases have held that a credit is allowed when the Commissioner finally approves the Schedule of Re-

funds and Credits as reported by the Collector, and not when the Commissioner first signs the Schedule of Overassessments for transmission to the Collector.

Swift & Co. v. *United States*, 68 Ct. Cls. 97.
Atlas Powder Co. v. *United States*, 40 Fed. (2d) 136.
West Leechburg Steel Co. v. *United States*, 40 Fed. (2d) 131.
Pottstown Iron Co. v. *United States*, 40 Fed. (2d) 142.
Revolution Cotton Mills v. *United States*, 41 Fed. (2d) 898.
Andrews Steel Co. v. *United States*, Ct. Cls. June 2, 1930.
Kingan & Co., Inc., v. *United States*, Ct. Cls. Oct. 20, 1930.

The only case to the contrary is *Penn Smokeless Coal Co.* v. *United States*, 34 Fed. (2d) 205, which must be considered of very questionable value, inasmuch as the decision was based upon an unfortunate error by that court in mistaking, for a rule laid down by this court in the *Girard Trust Company* case, the treasury regulation which was quoted in the opinion in the *Girard* case only for the purpose of holding the same invalid.

(a) The rule adopted by the court below creates no administrative difficulties.

The court in the *Girard Trust Company* case, after laying down the rule that "The statute is to be construed in the light of the difficulties of Government bookkeeping and accounting," proceeded to state:

> "This date* would seem to be just as certain and convenient from an administrative standpoint as that of the original decision of the Commissioner."

No reason has been advanced which would tend to show that the adoption of this date for fixing the time for the allowance of credits, as well as refunds, would create any inconvenience in the computation of interest adjustments, or otherwise.

Indeed, as above pointed out, it would avoid the difficulty presented under the rule contended for by the Government, as to the application of overpayments against taxes or instalments falling due between the date when the Commissioner first signs the Schedule of Overassessments and the Collector's action thereon.

It by no means follows, as argued by the Government, that the allowance of a credit must precede the allowance of a refund. On the contrary, it is much more logical to hold that both are allowed at one and the same time, since, as stated by the Circuit Court of Appeals (R. 22), the amount to be refunded is absolutely determined when the credit is allowed.

(b) Contrary departmental interpretation should not control the plain meaning of the law.

Upon this point the instant case stands exactly the same as the *Girard Trust Company* case. In that case the regulation held invalid had been originally adopted by the Treasury department under the Revenue Act of 1921, and the interest provisions of that statute had been uniformly construed in accordance therewith by the administrative department entrusted with its en-

*Date when Commissioner signed the Schedule of Refunds and Credits returned by Collector.

forcement. The material language of that statute was later re-enacted in the Revenue Act of 1924. Yet the court in the above case had no hesitation in declaring to be invalid as contrary to law this regulation which had been in force for nearly five years at the time of its decision, *i.e.*, March 1, 1926. There is no reason why any greater weight should be given to the regulation in the present case.

Reference is made in the Government's brief (pp. 28, 29) to section 1116 of the Revenue Act of 1926. That statute was repealed by section 614 of the Revenue Act of 1928, and, even while in force, had no application to the instant case. In the 1926 law Congress was primarily concerned with the dates from which and to which interest should be computed upon overpayments refunded or credited.* The definition contained in sec-

*The following is taken from the Conference Report on the Revenue Bill of 1926, said report being dated February 22, 1926, and found in Report No. 356, House of Representatives, 69th Congress, First Session, at page 56:

> "Amendments Nos. 181 and 182: The House Bill reenacted without change the existing law relating to payment of interest on refunds and credits. Under existing law in the case of a credit taken against an additional assessment the taxpayer is allowed interest from the date of his overpayment to the date of the additional assessment. In the case of taxes imposed by acts prior to the act of 1921 the taxpayer (except as provided in section 283 of this bill) pays no interest in the case of underpayment up to the date of assessment. Consequently it frequently happened that the taxpayer who owes the Government money upon which he is paying no interest is collecting interest upon money which the Government owes him. This amendment remedies this situation by allowing interest in the case of a credit under an act

tion 116 as to the date of allowance was limited to refunds for the reason that this date was not material in computing the period for the payment of interest upon credits. As to credits such period was definitely fixed as from the date of overpayment to the due date of the amount against which the credit was taken, or, in the case of an additional assessment for 1921 or later years, to the date of such assessment, irrespective of the date of allowance. It is believed that no proper inference can be drawn from this section to support the Government's position in this case. On the contrary, the Conference Report shows the understanding of Congress to be as follows:

> "In practice the Commissioner *first* signs the schedule of overassessments, which is sent to the collector, *in order to determine whether the overpayments should be credited or refunded.*" (Italics supplied.)

The attention of the court is directed to the fact that the taxes against which the credits in this case were finally applied were not additional assessments, but were original assessments (R. 5). This is not one of the class of cases described in the Conference Report

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prior to the Revenue Act of 1921 only to the date on which the original tax against which the credit is taken was due. In the case of refunds interest is allowed 'to the date of the allowance of the refund.' In practice the Commissioner first signs the schedule of overassessments, which is sent to the collector, in order to determine whether the overpayments should be credited or refunded. This amendment proposes to fix as the date upon which the refund is allowed the date on which the commissioner signs the schedule of overassessment."

where a taxpayer who owes the Government money upon which he is paying no interest is collecting interest upon money which the Government owes him. All that respondent is awarded by the judgment of the court below is compensatory interest upon the amount of overpayment from the date of such overpayment to the due date of the instalments against which the credits were applied, as provided in the Revenue Act of 1924, and it is clear that the decision of the court below (to borrow the words of this Court in the *Girard Trust Company* case) *is certainly more in conformity to the general purpose of Congress to relieve the overassessed taxpayer by paying compensatory interest on money unjustly taken and kept by the Government.*

3. Significance of July 11, 1924, the date on which the Collector acted upon the Schedules.

It will be noted that the date when the Collector acted upon the schedules, namely, July 11, 1924, as well as the date when the Commissioner finally approved the same, namely, July 31, 1924, occurred after the effective date of the Revenue Act of 1924, *i.e.*, June 2, 1924 (R. 5). For this reason it was unnecessary for the trial court to decide upon which of these dates the allowance took place, since in either event the amount of interest payable would be governed by the provisions of the 1924 Act (R. 16).

In the *Girard Trust Company* case the court held that the Commissioner was the final judge in the administrative branch of the Government to decide that a refund or credit should be granted, and it may follow that the date of action by the Collector is without any particular significance. However that may be, it is obvious that

this was the first date on which a determination was made that a *credit* should be granted.

It is believed, as pointed out, that the true date of allowance is the date when the Commissioner finally approves the Schedule of Refunds and Credits returned by the Collector, but, if it should be held that the time of the Collector's action upon the schedules is the determinative date, the respondent is likewise entitled to its judgment.

CONCLUSION.

It is respectfully submitted that the decision of the court below was correct, and that its judgment should be affirmed.

Respectfully submitted,

CHARLES W. MULCAHY,
Attorney for Respondent.

ROBERT N. MILLER,
Of Counsel.

November, 1930.

FILE COPY

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Supreme Court of the United States

OCTOBER TERM, 1929

No. 43

UNITED STATES OF AMERICA,
Petitioner

vs.

IRON CAP COPPER COMPANY,
Respondent

BRIEF FOR IRON CAP COPPER COMPANY IN OPPOSITION TO PETITION OF THE UNITED STATES OF AMERICA FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BURTON E. EAMES,
Attorney for Iron Cap Copper Company, Respondent.

PRESS OF GEO. H. DEAN CO., BOSTON

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Supreme Court of the United States

OCTOBER TERM, 1929
No. 633

UNITED STATES OF AMERICA,
Petitioner

vs.

IRON CAP COPPER COMPANY,
Respondent

BRIEF FOR IRON CAP COPPER COMPANY IN OPPOSITION TO PETITION OF THE UNITED STATES OF AMERICA FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

This is a petition by the United States for a writ of certiorari to review a decision of the United States Circuit Court of Appeals for the First Circuit.

INTRODUCTORY STATEMENT.

This action was originally brought in the District Court of the United States for the District of Massachusetts by Iron Cap Copper Company against the United States of America, to recover interest on certain amounts overpaid by said Iron Cap Copper Company

for income and profits taxes for 1918 which were applied as credits on additional assessments for other years.

The case was heard in the District Court upon an agreed statement of facts and oral evidence by one witness on behalf of the United States. The court found in favor of the plaintiff and entered judgment on June 24, 1919 (Rec. pp. 41-49).

The case was appealed by the United States to the United States Circuit Court of Appeals for the First Circuit and the record there, in addition to the agreed statement of facts, contained certain additional facts as set out in the opinion of the District Judge, and certain additional special findings (Rec. pp. 27-40).

The United States Circuit Court of Appeals for the First Circuit affirmed the decision of the District Court and the United States now asks this Court for a writ of certiorari to review that decision.

The question involved in the case is *when the credit was allowed;* that is, on which of the three following dates: (1) March 29, 1924, when the Commissioner certified a Schedule of Overassessments showing that the plaintiff had been overassessed for 1918 in the sum of $180,322.66, (2) July 14, 1924, when the Collector reported back to the Commissioner as directed, showing that of the total overassessment the appropriate amounts of abatement, credit and refund were as follows:

Abatement	$48,539.94
Credit	102,931.89
Refund	28,850.83

(3) August 7, 1924, when the Deputy Commissioner certified to the Commissioner his approval, and when the

Commissioner signed the authorization to the Disbursing Clerk, finally fixing the amount of the refund and authorizing its payment.

The date of the allowance of the credit was material because if it was "allowed" *before* June 2, 1924 (the effective date of the Revenue Act of 1924) the legal result of the allowance is determined under the Revenue Act of 1921, while if it was "allowed" *after* June 2, 1924 the legal result is determined under the Revenue Act of 1924. It is the rule that interest on *refunds* is to be computed in conformity with the law in force at the time of the allowance of the refund.

> *United States* v. *Magnolia Petroleum Co.*, 276 U. S. 160.
>
> *Blair, Commissioner,* v. *United States, ex rel. Birkenstock,* 271 U. S. 348.

It is agreed by both the petitioner and the respondent, that the same is true in the case of a claim for *credit* (Petitioner's Brief, p. 16).

If the credit in this case was allowed before June 2, 1924 and therefore under the Act of 1921, then interest on the credit would run *to* the date of allowance of the credit but only *from* six months after filing of claim by respondent (plaintiff). If it was allowed after June 2, 1924 and under the Act of 1924, then interest would run *from* date of payment of tax *to* the dates of the additional assessments against which the overpayment was credited. The latter was the more advantageous to the respondent (plaintiff).

The District Court and the United States Circuit Court of appeals for the First Circuit, following the statement by this Court in *Girard Trust Company* v.

United States, 270 U. S. 163, held that the date of allowance of the credit, like the date of allowance of the refund, was August 7, 1924, the date when the Commissioner signed his final schedule and authorized payment of the refund, that being the date when its "exact amount" was "fixed finally by competent authority", and that respondent (plaintiff below) is accordingly entitled to interest on the amount of the credit, under the Revenue Act of 1924. The petitioner here contends that this decision was wrong, and seeks to obtain a reversal.

STATEMENT OF FACTS.

The respondent (plaintiff below) duly filed its income and profits tax return for the year 1918, showing taxes due in the sum of $183,099.78, which amount was duly paid (Agreed Facts, Par. IV, Rec. pp. 7-8). After an examination and audit the Commissioner determined that the respondent was liable to an additional tax for 1918 in the sum of $48,539.94 and on June 11, 1921, the Commissioner made an additional assessment upon the respondent in that amount (Agreed Facts, Pars. VII-VIII, Rec. pp. 8-9). This made a total assessment for 1918 of $231,639.72.

After various audits it was finally determined that the correct tax assessable upon the respondent for 1918 was $51,317.06 and that accordingly there had been an overassessment of $180,322.66 and on March 29, 1924, the Commissioner of Internal Revenue approved a "*Schedule of Overassessments*" which included the abovementioned overassessment against the respondent for the year 1918 in the sum of $180,322.66. This schedule was transmitted to the Collector with the following "Author-

ization of Commissioner". (Agreed Facts, Pars. XII and XIV, Rec. pp. 10-11 and Exhibit Annexed.)

"To the Collector.....District of Massachusetts

The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the 'Certificates of Overassessment' or 'Notices of Adjustment of Refund' attached thereto.

You will immediately check such items against the accounts of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated, in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts. (This applies only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of Refunds and Credits (Form 7805-A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an appropriate memorandum made upon the taxpayer's account.

You will thereupon complete and certify this schedule and the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Revenue.

Date March 29, 1924.

D. H. BLAIR
Commissioner of Internal Revenue."

The Collector determined the respective amounts which were to be abated, credited and refunded and on July 14, 1924, returned the Schedule of Overassessments with the following certificate to the Commissioner.

"CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date July 14, 1924.

Collector.....District of Mass.
M. E. NICHOLS"

Under the same date he also returned the subsidiary "Schedule of Refunds and Credits" (copy also annexed to Agreed Facts) with the following certificate:—

"CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items hereon are relisted as they appeared for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit.

Date July 14, 1924

M. E. NICHOLS
Collector.....District of Mass."

The Schedule of Overassessments as so returned by the Collector to the Commissioner showed the amount of abatement, $48,539.94, the amount of the credits, $102,931.89 (specifying particular taxes for other years upon which the credits were applied), and the amount to be refunded, $28,850.83. The subsidiary "Schedule of Refunds and Credits" showed the amount of the credits and the amount of the refund but not the amount of abatement.

Without going into unnecessary detail regarding the determination of the taxes for other years, upon which taxes the $102,931.89, allowed as a credit, was applied, it is sufficient to state that the credit was all applied on additional assessments and that the respective amounts so credited, the years to which the other taxes in question related, and the dates of the additional assessments were as follows. (Agreed Facts, Par. XV, Rec. pp. 11-12. See also schedule attached to Collector's subsidiary "Schedule of Refunds and Credits".)

"Amounts Credited	Year Against Which Credited			Dates of Assessment
$ 6,300.77	Add'l assessment		1917	8/18/18
50,962.85	"	"	"	5/25/20
59.85	"	"	1916	6/11/21
20,061.60	"	"	1917	6/11/21
20.04	"	"	1913	3/20/24
17.30	"	"	1914	3/20/24
14.74	"	"	1915	3/20/24
18.41	"	"	1916	3/20/24
25,476.33	"	"	1917	3/20/24
$102,931.89	Total amount credited."			

After the Collector had returned to the Commissioner the "Schedule of Overassessments" with the Collector's

figures of abatement, credit and refund thereon and his subsidiary "Schedule of Refunds and Credits", again listing the amounts of the credits and the amounts of the refunds, the Deputy Commissioner certified to the Commissioner on August 7, 1924 (on the "Schedule of Refunds and Credits"), as follows:

"CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed and the accrued interest, if any, listed in column 6 has been found due.

Date August 7, 1924

J. G. BRIGHT
Deputy Commissioner."

On the same date the Commissioner signed the authorization for payment of the refunds in the following language:

"AUTHORIZATION OF COMMISSIONER

To the Disbursing Clerk, Treasury Department:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due. Payment may, therefore, be made in the amounts shown in column 7.

Date August 7, 1924

D. H. BLAIR
Commissioner of Internal Revenue."

On February 21, 1928, in pursuance of a request by the respondent for an allowance of interest on its overpayment, the Commissioner advised the respondent of the allowance of interest in the amount of $8,033.57 on $28,850.83, the amount *refunded,* from the date of payment to the date of allowance of the refund. The schedule based on this computation and allowance of interest was approved on May 11, 1928, and payment was made on May 15, 1928. (Agreed Facts, Pars. XVII, XVIII, Rec. p. 13.)

The Commissioner declined to allow any further interest on account of the overassessment of $180,322.66 for the year 1918, and specifically no interest has been paid or allowed upon the amounts of the credits of $102,931.89. (Agreed Facts, Par. XX, Rec. p. 13.)

It was conceded below and is one of the special findings of fact made by the District Judge that there is no record of the actual date of applications of credits on the Collector's books and that the *official application of the credit by the Collector is the date on which he signs the subsidiary "Schedule of Refunds and Credits".* This date, in the present case, was July 14, 1924 (Rec. p. 40).

There are three possible dates upon which it may be argued the credits were "allowed". These dates are given above, but we repeat them here for convenience.

1. March 29, 1924, the date when the Commissioner signed and transmitted to the Collector his original "Schedule of Overassessments".

2. July 14, 1924, the date when the Collector (a) certified on the "Schedule of Overassessments" that he had checked the items of overassessments with the taxpayer's accounts and stated to the Commismissioner the amounts which he had applied as

abatements and credits on their accounts and the net amounts which he found to be refundable, and (b) signed the subsidiary "Schedule of Refunds and Credits" again certifying the amounts which he had determined as the proper amounts of credit and refund.

3. August 7, 1924, the date when the Commissioner indicated his approval of the Collector's figures by signing the authorization for payment of the refunds.

Obviously, if the first of these dates is taken the allowance was made under the Revenue Act of 1921, while if either of the other dates is taken the allowance was made under the Revenue Act of 1924 and is governed by the provisions of that Act and the respondent (plaintiff) is entitled to the interest claimed.

The Government argues for the first of the three dates, namely, March 29, 1924, the date of the Commissioner's original Schedule of Overassessments. The respondent, on the other hand, argues that both under the authority of *Girard Trust Company* v. *United States,* 270 U. S. 163, and other decisions cited below, and as a matter of principle, the true date of allowance was August 7, 1924, when the Commissioner approved the amounts of the credits and refunds indicated by the Collector; or in the alternative, that the credits can not be said to have been allowed in any case earlier than July 14, 1924, the date of the Collector's certification on the schedules returned by him to the Commissioner, upon which he fixed for the first time the amounts of the abatements, credits and refunds to which the taxpayers were entitled.

STATUTES WHICH MAY BE MATERIAL.

Revenue Act of 1921: (42 Stat. ch. 136)

"REFUNDS

Sec. 252 (a). That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' the Act of October 3, 1913, entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' the Revenue Act of 1916, as amended, the Revenue Act of 1917, or the Revenue Act of 1918, it appears that an amount of income, war-profits or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer:"

"INTEREST ON REFUNDS AND JUDGMENTS.

Sec. 1324. (a) That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows:

(1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or

(2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or

(3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit.

The term 'additional assessment' as used in this section means a further assessment for a tax of the same character previously paid in part."

Revenue Act of 1924: (43 Stat. ch. 234)

"OVERPAYMENTS.

Sec. 272. If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the excess shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the excess shall be credited or refunded as provided in section 281."

"CREDITS AND REFUNDS.

Sec. 281. (a) Where there has been an overpayment of any income, war profits, or excess-profits tax imposed by this Act, the Act entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' approved August 5, 1909, the Act entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or any such Act as amended, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

"INTEREST ON REFUNDS AND CREDITS.

Sec. 1019. Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part."

Revised Statutes, Section 3220:

(This section appeared as Section 1315 in the Revenue Act of 1921 and was reenacted without change as Section 1011 of the Revenue Act of 1924.)

"Sec. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him

by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section."

Revenue Act of 1926: (44 Stat. ch. 27)

"CREDITS AND REFUNDS"

"SEC. 284. (a) Where there has been an over-payment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' approved August 5, 1909, the Act entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer."

"INTEREST ON REFUNDS AND CREDITS"

"SEC. 1116. (a) Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit

is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount.

(b) As used in this section—

(1) The term 'additional assessment' means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency under Title II or Title III of the Revenue Act of 1924 or of this Act;

(2) The term 'date of the allowance of the refund' means, in the case of any income, war-profits, or excess-profits tax, the first date on which the Commissioner signs the schedule of overassessments in respect thereof.

(c) This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this Act, even though such refund or credit was allowed prior to such date."

Revenue Act of 1928: (45 Stat. ch. 852)

"REFUNDS AND CREDITS"

"SEC. 322. (a) AUTHORIZATION. Where there has been an overpayment of any tax imposed by this title, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer."

INTEREST ON OVERPAYMENTS

"SEC. 614. (a) Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax, at the rate of 6 per centum per annum, as follows:

(1) In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment of a tax imposed by the Revenue Act of 1921 or any subsequent Revenue Act, then to the date of the assessment of that amount.

(2) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner.

(b) As used in this section the term 'additional assessment' means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency of any income or estate tax imposed by the Revenue Act of 1924 or by any subsequent revenue act.

(c) Section 1116 of the Revenue Act of 1926 is repealed.

(d) Subsections (a), (b), and (c) shall take effect on the expiration of thirty days after the enactment of this Act, and shall be applicable to any credit taken or refund paid after the expiration of such period, even though allowed prior thereto."

THE REASONS UPON WHICH PETITIONER BASES THIS PETITION FOR CERTIORARI.

The reasons stated by the petitioner as the basis of its request for a writ of *certiorari* are the following in substance:

1. That the question when a credit is allowed has not been decided by this Court and that the language

in the *Girard Trust Company* case upon this point was ill considered.

2. That the decision of the District Court and the Circuit Court of Appeals in accordance with the language in the *Girard Trust Company* case overturns a rule as to computation of interest on credits heretofore followed by the Bureau of Internal Revenue in many cases and substitutes a rule which cannot be uniformly applied.

3. That there is "some conflict in the decisions of the lower Federal Courts", the Court of Claims in *Swift & Company vs. United States,* having adopted the view laid down in the instant cases and the District Court of the United States for the Western District of Pennsylvania in the case of *Penn Smokeless Coal Company vs. United States,* 34 Fed. (2d) 205 having held *contra.*

4. That the cases are of great importance to the United States and to the public because of large amounts of money involved in previous credit allowances and because of certain reasons having to do with Statutes of Limitations.

The respondent respectfully submits that none of these alleged reasons are sufficient and that there are no valid reasons for granting the writ.

ARGUMENT.

An examination of the facts and circumstances of this case and of the decisions of the various federal courts which have dealt with this question of when a credit is "allowed" make it clear (1) that there is no real conflict in the decisions of the lower courts; (2) that the question here involved is not of substantial public importance but is chiefly of mere historical interest; (3) that there is certainly no public necessity which requires the rule of law to be changed so as to accord with a practice adopted by the Bureau of Internal Revenue in computing interest on credits, and (4) that in any case the *dictum* in the *Girard Trust Company* case was a sound statement of the law.

No Real Conflict In Decisions Of Lower Courts.

The decisions of the Court of Claims in *Swift Company vs. United States* (May 6, 1929, unreported—rehearing denied December 2, 1929), and the decision of the District Court of the United States for the District of Massachusetts, (Judge Morton) in the *Iron Cap Copper Company* case, 31 Fed. (2d) 628, and the decision of the United States Circuit Court of Appeals for the First Circuit in both these cases, 35 Fed. (2d) 560, are all to the same effect. All follow the statement of the rule as laid down by this Court in the *Girard Trust Company* case, and hold that the effective date of allowance of the credit was when the Commissioner finally approved the Schedule of Refunds and Credits, after it had been returned to him by the Collector. This date in the present case was August 7, 1924. Judge Brewster in

the *Boston Buick* case, in the District Court, 27 Fed. (2d) 395, was in substantial agreement but found it unnecessary to decide whether the date of allowance was when the Collector returned the Schedule of Refunds and Credits to the Commissioner or when the latter finally approved said Schedules, because both dates were subsequent to June 2, 1924, the effective date of the 1924 Act. He was entirely clear that the credit was not allowed when the Commissioner signed the original Schedule of Overassessments.

The only apparent dissent is that in *Penn Smokeless Coal Company vs. United States,* 34 Fed. (2d) 205, in which, as the United States Circuit Court of Appeals in the instant cases said, "the sitting judge * * * inadvertently misconstrued the opinion of the Chief Justice in the *Girard Trust Company* case." (Rec. p. 57.) The mistake of the court in that case is so evident that it may well be assumed the court itself would have been the first to correct it if it had but been called to his attention.

In that case it appears that the schedule of overassessments was signed and transmitted to the Collector on January 13, 1926; that the Collector on January 28, 1926, certified and returned to the Commissioner the Schedule of Refunds and Credits and that the approval and authorization of the Commissioner was signed on March 11, 1928. The issue was whether the credit was allowed under the Revenue Act of 1926 which was enacted February 26, 1926, or under the previous act, that of 1924. It was held that the credit was allowed prior to the effective date of the 1926 Act and the language of the court indicates the view that the credit was allowed when the Commissioner signed the original Schedule of Overassessments. This is in accord with the Government's

theory. An examination of the case shows the Court's palpable misapprehension of what Chief Justice Taft had stated in *Girard Trust Company vs. United States,* for in the course of its opinion the Court says:

> "In Girard Trust Co. vs. United States, supra, the Court, in the opinion by Mr. Chief Justice Taft, laid down a rule, as follows: 'A claim for refund or credit is allowed within the meaning of the statute when the Commissioner approves the schedule in whole or in part for transmission to the proper accounting officer for credit or refund.' * * * * * Applying the rule laid down in Girard Trust Co. vs. United States to the actual procedure in the Bureau of Internal Revenue, the credit to the plaintiff was allowed when the Commissioner approved the Schedule of Overassessments * * * * * for transmission to the Collector, and thus directed the latter to credit plaintiff with the amount of its overpayments of 1918 taxes against other taxes owed by it."

This statement by the District Court of "the rule laid down" by the Chief Justice in the *Girard Trust Company* case is erroneous and is directly *contra* to what the Chief Justice actually said. What the Chief Justice did say appears at pages 169, 170, 171 thereof, as follows:

> "The Treasury Department by its regulations of 1922 construed this provision as follows:
>
> > 'A claim for refund or credit is allowed within the meaning of the statute when the Commissioner approves the schedule in whole or in part, for transmission to the proper accounting officer, for credit or refund.' * * *
>
> We cannot concur, however, in the view of the Treasury Department that the date of the allowance of the

claim as intended by the statute is the date when the Commissioner first decides that there has been an overassessment and sends upon a proper form his decision to the Collector of Internal Revenue, who made the collection and keeps the account with the taxpayer."

In other words, what the Pennsylvania Court cites as a rule laid down by the Chief Justice, was in reality a rule which the Chief Justice said the Treasury Department had laid down but in which the Supreme Court refused to concur. This would seem to make the authority of the decision of the Pennsylvania Court of negligible importance.

No Question of Substantial Public Importance Is Here Involved.

In the first place the respondent submits that there is nothing in the record which justifies the allegations in the petition as to the amount of money involved in pending interest cases and nothing to show that any injustice will result either to the United States or to the taxpayers from a definite adherence to the rule of law as stated by this Court in the *Girard Trust Company* case.

Moreover, an examination of the provisions of the succeeding revenue acts, as hereinbefore set out, discloses that the question as to just when a credit is "allowed" has become largely a matter of mere historical importance.

We may summarize the provisions of the successive Revenue Acts in the matter of interest payable on refunds and credits (which are set out above—pp. 11-16) as follows:

Act of 1921, *Sec.* 1324 (*a*):

Interest on refund or credit *from* date indicated below to date of allowance.

1. If amount was paid under specific protest, then from date tax was paid.
2. If paid without protest but pursuant to additional assessment, then from time additional assessment was paid.
3. If paid without protest and not pursuant to additional assessment, then from six months after filing claim.

Act of 1924, *Sec.* 1019:

Interest allowed on refund from date of payment of tax to date of allowance of refund.

Interest allowed on credit from date of payment of tax to

Due date of amount against which credit is taken,

but if taken against an additional assessment, then to date of assessment.

Act of 1926, *Sec.* 1116:

Interest allowed on refund from date of payment of tax to date of allowance of refund.

Interest allowed on credit from date of payment of tax to

Due date of amount against which credit is taken,

but if taken against additional assessment under Revenue Acts of 1921, 1924 or 1926, then to date of additional assessment.

Act of 1928, *Sec.* 614:

> Interest allowed on refund from date of overpayment of tax to date not more than thirty days before date of refund check.
>
> Interest allowed on credit from date of overpayment to
>
> Due date of amount against which credit is taken,
>
> but if taken against additional assessment under Revenue Act of 1921, or any subsequent revenue act, then to date of additional assessment.

It will be seen from the above summary that while the date of allowance of a credit was, under the Act of 1921, the date to which interest on the credit was figured, this is not true under any subsequent acts. With respect to all credits "allowed" since June 2, 1924, the effective date of the Revenue Act of 1924, the only question as to which the date of allowance of a credit may be material is the question under which of the acts the interest is to be computed. In the *Penn Smokeless* case it was a material question whether the credit was allowed while the Revenue Act of 1924 was in effect or not until after the Revenue Act of 1926 became effective. The overpayment in that case was an overpayment of taxes for 1918 which had been credited on an additional tax assessed for 1919 and the question was material because if allowed under the Act of 1926 interest ran to the date of the additional assessment only if such additional assessment was made under the Revenue Act of 1921, or some subsequent act, whereas if it was allowed under the Act of 1924 interest ran to the date of the additional assessment, even if it related back to 1919.

Since the Revenue Act of 1926 became effective February 26, 1926, there has been no change in substance in the provisions regarding interest on credits. Consequently, as to any credits allowed since February 26, 1926, the date of allowance is wholly immaterial as bearing on this interest question. The beginning and the end of the interest period in the case of interest on credits is determined entirely by other facts; and as there has been no change of substance in the provisions of the law regarding interest, it does not matter which Revenue Act was in effect at the time of the allowance.

As to any credits allowed before February 26, 1926, all adjustments of interest resting on such allowance have doubtless in most cases been made long since. In view of the short Statute of Limitations, it seems fair to assume that not many of these cases remain open for adjustment. In any case the interest of the United States and of the taxpaying public will be properly served if the adjustments are made in accordance with the rule laid down in the *Girard Trust Company* case.

The Government argues that the action of Congress in the Revenue Act of 1926, in fixing the date of allowance of refunds as the date of the original Schedule of Overassessments, without making similar provision as to interest on credits, indicated that Congress deemed credits to be allowed at the date of said original Schedule in accordance with the Bureau practice. As a matter of fact the date of allowance in the case of a refund still continued to be material under the 1926 Act, because interest ran to that date, while in the case of a credit the date of allowance of the credit was *not* material, as interest ran from the date of the overpayment to the due date of the amount against which the credit was taken,

or if taken against an additional assessment then to the date of the assessment. In view of this fact and of the further fact that the *Girard Trust Company* decision had been handed down nearly a year prior to the 1926 Act, the more logical conclusion is that Congress decided to leave the matter of past credit allowances as it had been left by the dictum of this Court. At any rate Congress did not undertake to make this rule as to date of allowance retroactive even as to refunds.

No Public Necessity Exists Requiring the Rule of Law to Be Changed to Accord with a Practice of the Bureau of Internal Revenue.

The statement made by Mr. Chief Justice Taft in the *Girard Trust Company* case, which has been followed ever since in all the decisions of the lower Federal Courts (except only the *Penn Smokeless* case above discussed) was laid down on March 1, 1926.

It was there stated (pp. 170-171):

> "The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and that a refund *or credit* should be granted, and *when he has made that decision finally,* he has allowed the claim for the refund or credit of the taxes paid within the meaning of the section.
>
> * * * * * *
>
> The findings and the exhibits show that the course of business is that the Collector on receiving from the Commissioner the schedule as to the overassessment, examines his books and reports back to the Bureau the amount which should be credited on taxes due and the amount to be refunded, that this is examined by the Assistant Commissioner and then is delivered to the

> Commissioner, *who makes it effective by his approval.* Until it reaches him and is approved by him, the refund cannot be paid. *This we think is the real date of allowance. Until that time, the exact amount of the refund is not fixed finally by competent authority.* This date would seem to be just as certain and convenient from an administrative standpoint as that of the original decision of the Commissioner, and it is certainly more in conformity to the general purpose of Congress to relieve the overassessed taxpayer by paying compensatory interest on money unjustly taken and kept by the Government." (Italics ours.)

If the rule thus stated by this Court, which is applicable *equally to refunds and credits,* has since that time for the most part been disregarded by the Bureau of Internal Revenue, it is doubtless unfortunate but that fact hardly furnishes a reason for changing the rule.

As Mr. Justice Wilson noted in the opinion of the Circuit Court of Appeals in the instant cases (Rec. p. 56):

> "It (the Treasury Department) also, prior to the decision in the Girard Trust Company case, had the same regulation as to the date of allowance of refunds; yet the court in that case held that a regulation of the Treasury Department and its practice in this respect was not in accord with the statute and that it did not control the plain effect of the acts of the Commissioner and the Collector. No good reason is now shown why the Department regulation as to the allowance of credits should control what appears to be the only reasonable inference to be drawn from the facts."

The Dictum in the Girard Trust Company Case Was a Sound Statement of the Law.

In *Girard Trust Company vs. United States,* 270 U. S. 163, (decided March 1, 1926) this question was squarely raised and definitely decided in its application to a re-

fund, so that were this a case of a refund and not a credit no room would exist for argument. In that case, as in the case at bar, the question turned upon the "date of allowance" of the refund. The Commissioner had signed his schedule of overassessments on December 9, 1922. This schedule was sent to the Collector with the usual instructions to examine the accounts of the taxpayers, to make the abatements called for and to apply the credits and report back the amounts of credits and refunds (for details of Commissioner's authorization see Form 7777—Rec. pp. 28-29). The Collector reported back to the Commissioner as directed, the Assistant Commissioner confirmed the report and the Commissioner directed the refund on January 16, 1923. It was held that the date of allowance of the refund and the date to which interest on the refund must run, was January 16, 1923, when the Commissioner finally directed the refund.

It seems reasonably clear that in the discussion quoted above at pages 25-26 the Supreme Court regarded credits and refunds in the same light and deemed the final date when the Commissioner approved the Collector's schedule of refunds and credits as the real date of allowance in either case.

It is difficult to understand how the counsel for the Government can argue that although the Commissioner's decision on *refunds* is not final until his final approval, nevertheless his decision on *abatements and credits* is final when he signs the original certificate of overassessments. If, as the Court stated in the *Girard Trust Company* case, "the exact amount of the refund" must be "fixed finally by competent authority" (i. e. by the Commissioner) before the refund can be said to have been allowed, it must be equally true that the exact

amount of a credit must be "fixed finally" by the same competent authority before the credit can be said to have been allowed.

In his original "Schedule of Overassessments" the Commissioner did not purport to fix the amount of either credit or refund. He merely certified his decision that the taxpayer had been *overassessed* in a certain amount. He was not deciding, and indeed he could not decide, how much of the overassessment should be merely abated, how much should be credited on taxes for other years and how much should be refunded. For, as the record shows, the Commissioner had no knowledge of the status of the taxpayer's accounts, and only in the Collector's office was the necessary information available to determine how much of the overassessment found by the Commissioner was to be abated, how much to be credited and how much to be refunded. (Rec. p. 39.) Before any of these items could be determined the Collector, who is the Commissioner's subordinate and representative, must examine the taxpayer's accounts and ascertain (1) how much of the total assessment the taxpayer has paid, and (2) how much the taxpayer owes for unpaid taxes for other years. In this manner the Collector determines (1) what amount of the overassessment has not been paid and should therefore be abated, (2) what amount of the actual overpayment should be applied or credited on the unpaid taxes for other years, and (3) what is the balance of the overpayment, if any, which should be refunded.

It would have been possible for the Supreme Court in the *Girard Trust Company* case to regard the date of the certificate of overassessment as the date of allowance of both credits and refunds, even though an investigation

of facts following that original schedule was necessary in order to determine the *amounts* of either credits or refunds. It might have held that the Commissioner's ignorance of these facts and figures, which were necessary to fix the *amounts* of the credits or refunds, was not material because both could readily be computed when the Collector had examined the accounts. The Court, however, chose to regard the "allowance" of the refund as a *conscious* act which could only become effective when the Commissioner *knew* the facts and could determine the *exact amount* which should be refunded. For the Court in the portion of the opinion quoted above, referring to the date when the Commissioner finally approved the schedules after they were returned to him by the Collector, said:

> "This we think is the real date of allowance. Until that time the exact amount of the refund is not fixed finally by competent authority."

Inasmuch as the amount of credits plus the amount of refund must in every case equal the total amount of overpayment, it is obvious that the amount of the credit and the amount of the refund are necessarily finally fixed and determined *simultaneously*. The credit and the refund are complements of each other. If the amount of the credit were finally fixed at any earlier date the amount of the refund would be necessarily fixed by the same act, for the refund is the balance of the overpayment after applying the credit. In view of the language of the Court in the *Girard Trust Company* case we are bound to say of the credit, as the Court there said of the refund, that it can not be regarded as *allowed* until "the exact amount * * * is * * * fixed finally by competent authority". The

language used by the Court indicates clearly enough that the date of the Commissioner's final approval was selected as the real date of allowance *because that was the date when the exact amount was finally fixed, not because that was the date when the Commissioner ordered the payment.* It seems to follow that in any case where the schedule of refunds and credits returned by the Collector is in fact approved by the Commissioner, that date under the *Girard Trust Company* case is the "real date of allowance" both as to credits and refunds, because that is the date when the amount of each is fixed finally by competent authority. This was the situation in the present case.

The following cases by analogy support the view that the Commissioner's final approval is the "real date of allowance" as to credits as well as refunds. *In Re Estate of Hall,* 155 Minn. 46, the Probate Court had made findings of fact and conclusions of law to the effect that the husband should

> "have and take his distributive share of the estate * * * under the provisions of the statutes of this state, the same as if said deceased had died intestate, in lieu of the provisions made for him by * * * said will".

The executor appealed under a statute which permitted appeal from an order or decree by which a "distributive share is allowed or payment thereof directed, or said allowance or direction refused". The Court said, p. 49:

> "The order does not purport to assign or distribute the property or any part thereof. It merely decides that respondent's rights are to be determined by the statute and not by the will. It does not give respondent the right to any specific property, or to any specific

> part or amount of the property. A further order or decree is necessary to carry it into effect. Before respondent will be in position to demand or receive any part of the property, a further order or decree must be made assigning it to him. * * * * * We think that respondent's claim to a distributive share of the personal property is not 'allowed' within the meaning of the statute, until an order or decree is made under which he is entitled to demand or receive it, or some part of it."

In *Zimmerman vs. Canfield,* 42 Ohio State 463, the question arose, in a proceeding relating to the taking of lands for a public purpose, whether the Commissioners had "fixed and allowed" compensation for the lands taken. The statute provided that claims should not be paid except upon the allowance of the Commissioner, etc., and the Court clearly indicated that the allowance was not made until the amount was fixed. The Court said, p. 468:

> "When the commissioners have caused to be entered upon their journal an order fixing and allowing the amount of compensation to a land owner who has made application therefor, they haxe exhausted their powers, and it only remains for the county auditor to draw his warrant on the county treasurer for the sum so allowed."

See also *McKnight vs. United States,* 13 Ct. Cl. 292, affirmed 98 U. S. 179, holding that allowance of a claim was the final action by the officer authorized under the law to act in the matter of such allowance and that all previous steps of accounting officers and others were merely preliminary.

These cases indicate the same conclusion as that stated by the Court in the *Girard Trust Company* case, namely,

that a claim is not "allowed" until its *amount* is fixed and determined, or until the official authorized to make the allowance, being advised of the amount, approves it. As appears from the *McKnight* case, just cited, the previous steps of accounting officers, etc., are preliminary. In the present case the Commissioner, in his original schedule, merely shows the amount of overassessment which is allowed. The Collector, who is the accounting officer for this purpose, determines how much of the overassessment is to be abated, credited and refunded respectively and reports back to the Commissioner. The Commissioner then examines and checks the figures reported by the Collector and, if found correct, gives his approval.

But it appears from the record that *if* the "Schedule of Refunds and Credits" discloses *no refundable items* of tax and no interest on credits

> "the instructions were to mark the original schedule of refunds and credits as cancelled, place it in a special loose leaf binder for reference, if necessary, to likewise mark the Bureau record copy as cancelled, indicate where the original was on file and file the Bureau record copy in its proper place according to the serial number"

and that in these cases no certificate was signed by the Commissioner of Internal Revenue. (Rec. p. 35.)

It would not seem difficult, even in these cases where the Commissioner does not actually sign the schedule, to find *in this procedure a sufficient official action on the part of the Commissioner approving the Schedule of Refunds and Credits* as returned to him by the Collector. There must be the same examination of the schedule even where there are no refunds to be made and no interest to

be paid on allowed credits, because there is the same necessity for checking the action of the Collector to see that the amounts of abatements and credits which he has allowed do not exceed the amount of the overassessment approved by the Commissioner on his original Schedule of Overassessments. (Rec. p. 39, bottom of page.)

It is argued for the Government that a refund can not be made until after the credit has been allowed and applied and it is attempted to be inferred that some substantial time must elapse between the allowance of the credit and the allowance of the refund. No good reason appears, however, why the allowance of refund and credit may not be *simultaneous*. It is certainly clear that neither credit nor refund can be allowed until it has been found and determined that the taxpayer has *overpaid* his proper tax. So far as actual determination of amounts of credit and refund are concerned, the determination of one automatically determines the other, for the sum of the two must equal the amount of the overpayment, and it is quite as consistent to follow the *Girard Trust Company* case and hold that the allowance or appoval of both takes place when the Commissioner finally approves the Schedule of Refunds and Credits as to adopt the Government's contention that, while refunds are allowed at the time of this final action, credits are to be deemed to have been allowed at the time of the original Schedule of Overassessments, *before the Commissioner had any knowledge either whether the taxpayer had overpaid or whether he owed any taxes for other years.*

It is not necessary to conclude, as is argued in the Government's brief, that if the date of final approval by the Commissioner is the correct date, then the credits are illegal unless the second schedule, to wit, the authoriza-

tion to the Disbursing Clerk, is signed by the Commissioner. The official approval of the Collector's action which is necessarily involved in the Commissioner's acquiescence, after the accounts have been thus checked in the Commissioner's office, may well be deemed equally effective as a final allowance of credits as if the schedule had contained items of refund and so had been signed by the Commissioner to authorize the refund payments. In other words, the "cancellation" of the Schedule of Refunds and Credits and the filing of the Bureau copy may be quite as effective, as an official act of the Commissioner, as the signing of the authorization to the Disbursing Clerk.

Indeed, the cases where an actual signing of the authorization to the Disbursing Clerk is not required must be very rare as the Schedules of Overassessment and the subsidiary Schedules of Refunds and Credits ordinarily refer not to a single taxpayer but to a large number of taxpayers, and obviously if any one of these was entitled to a refund, or to interest on an allowed credit, the authorization to the Disbursing Clerk would be signed by the Commissioner. It also seems a fair assumption that credits allowed would ordinarily carry interest so that the authorization to the Disbursing Clerk would be signed by the Commissioner simply for that reason, if for no other. We assume it will not be argued that the signing by the Commissioner of the authorization to the Disbursing Clerk does not constitute his approval of the entire Schedule of Refunds and Credits even though there were but a single refund or interest item to be paid.

It may be appropriate as bearing on the view taken by the Treasury Department itself as to the date of the allowance of the credit in the case now under considera-

tion, to refer to the so-called "Certificate of Overassessment" (not to be confused with the "Schedule of Overassessments" which was signed March 29, 1924) which was sent to this respondent (plaintiff) with the refund check *after* the final Schedule of Refunds and Credits which was signed on August 7, 1924. This Certificate of Overassessment appears as the last photostat but one between pages 16 and 17 of the Record. This Certificate of Overassessment bears no date but it obviously *followed* the final approval of the Schedule of Refunds & Credits by the Commissioner, because it comes from the Commissioner's office, indicates the amount of abatement, the amounts of the credits in detail, and the amount of the refund; and it purports to carry the treasury check for the refund. It will be noted that this Certificate of Overassessment states that the amount of the overassessment "*will be* abated, credited or refunded as indicated below". Even at this late date, therefore, the credit is apparently to be made in the future.

In Any Event the Decision in the Present Case Is Clearly Right and Should Not Be Reviewed Because Under No Circumstances Can the Date of "Allowance" Be Earlier Than July 14, 1924, the Date of the Collector's Subsidiary "Schedule of Refunds and Credits".

Even if the foregoing argument were unsound, it is certainly clear that the amount of the credit was not "finally fixed by competent authority" and, consequently, can not be regarded as "allowed" in any case earlier than the date of the Collector's certification of

the schedules which he returned to the Commissioner, namely, July 14, 1924.

The form of the transaction and the language of the communications between the Commissioner and the Collector amply support this view. The authorization of the Commissioner on the original schedule of overassessments is directed to the Collector and contains the following significant language:

> "The amounts listed in column 4 as *overassessments* (or *reductions of tax liability*) are hereby approved. * * *.
>
> You will immediately *check such items against the accounts* of the several taxpayers *and determine whether the amounts* in which the tax liabilities have been reduced *should be respectively abated,* in whole or in part and make such abatements * * .
>
> If any part of any such item *is found to be an overpayment* you will examine all accounts of the taxpayer for other periods *and apply the overpayment as a credit against the taxes* due, if any, making the appropriate entries in your accounts * * * . Such credits will be entered in column 9 and placed in column 5 of a subsidiary schedule of refunds and credits.
>
> The balance, if any, of the overpayment will be entered in column 12 and placed in column 4 of the subsidiary schedule referred to above".

Nothing in this authorization purports to be an allowance of either a *credit* or a *refund.* It is merely a statement of the amounts in which taxpayers have been *overassessed* and a direction to the Collector to examine the accounts and determine to what extent the taxpayers' liability *should be abated;* and *if the proper amount* of tax, as thus determined by the Commissioner, *has been*

overpaid then the Collector is to examine all accounts of the taxpayer for other periods and *apply the amount of the overpayment as a credit* on these other taxes. Then if there remains any balance of the overpayment, such balance is to be listed as the amount refundable to the taxpayer.

The language of the statutes which we have quoted above indicates clearly that *before any credits can be allowed the fact of overpayment must appear.* In Section 252 (a) of the 1921 Act it is provided that

> "If upon examination of any return of income * * * *it appears that an amount of* * * * *tax has been paid in excess of that property due,* then * * * the amount of the excess shall be credited against any income * * * taxes * * * due from the taxpayer, etc." (Italics ours.)

Section 281 (a) of the 1924 Act provides that

> "Where there has been an overpayment, etc., the amount of such overpayment shall be credited, etc."

Until the Collector has made his investigation of the taxpayer's accounts and has ascertained how much of the overassessment has been actually overpaid and how much of this overpayment is to be claimed by the Government on unpaid taxes for other years, neither the Collector nor anyone else can determine what the credit is to be. We have already noted the concession on the part of the Government that there is no official action by the Collector in the matter until he certifies the schedules which are to go back to the Commissioner. (Rec. p. 40.) These schedules he certified in the present case on July 14, 1924, and if the date of "allowance" of the credit is to be moved back from the date when the Commissioner affixes his final approval to the schedules, it can not be

fixed earlier than the date when the Collector, on behalf of and under the express authorization of the Commissioner, finally determined the amount of the credit. The Collector is the subordinate of the Commissioner and his action in determining and applying the credits is taken under the Commissioner's *express authority.* His action, therefore, may be deemed the action of the Commissioner for the purpose of "fixing finally by competent authority" the "exact amount" of the credit. This act of the Collector is the "ministerial act of another administrative officer" which is referred to by Judge Brewster in *Boston Buick Co.* v. *United States,* supra, as being "necessary before it can be determined that there will be any credit or before the exact amount of it can be ascertained".

It is argued on behalf of the Government that the date of the allowance or application of these credits by the Collector on the taxes for other years can not possibly be treated as the date of allowance, because only the Commissioner is authorized to make such allowance. But there is nothing inconsistent with the Commissioner's prerogative and authority in the matter, in holding that when the Collector, after examining the taxpayer's accounts, determined the amount of the credit and applied it to other taxes due, being directed so to do by the Commissioner, he then, as the agent and representative of the Commissioner for this purpose, "allowed" the credit. In any large corporate organization and especially in the Bureau of Internal Revenue of the United States, many acts which are the function of the head of the organization to perform, must be done by other individuals under delegated authority. Here was no delegation of judicial discretion, but merely the delegation of authority to do a ministerial act, namely, to examine the accounts and

find how much had been overpaid, then to examine the accounts of other years and apply the overpayment as a credit.

If it is argued that this action of the Collector can not be final because it may be reversed or disapproved by the Commissioner, the answer is obvious, that it may well be deemed final unless and until so reversed or disapproved. As the court said in the *Girard Trust Company* case, page 170:

> "The mere fact that he can reverse a final allowance does not prevent its being a final allowance, any more than when a court renders a judgment, its ability within the term to set it aside or change it affects its finality, if it is not changed."

CONCLUSION.

In conclusion the respondent respectfully submits not only that no valid ground appears to justify the issuance of the writ prayed for, but that all the considered decisions of the lower courts are unanimous in following the dictum by Chief Justice Taft in the *Girard Trust Company* case; that the rule so laid down is correct and that even if there were reasonable doubt, which the respondent denies, such interest as the issue raised by the petitioner presents is almost wholly an historical interest and that the petition should be denied.

Respectfully submitted,

BURTON E. EAMES,

Attorney for Iron Cap Copper Company,
Respondent.

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Supreme Court of the United States

OCTOBER TERM, 1930
No. 43

UNITED STATES OF AMERICA,
Petitioner

vs.

IRON CAP COPPER COMPANY,
Respondent

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENT IRON CAP COPPER COMPANY

BURTON E. EAMES,
Attorney for Iron Cap Copper Company.

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Supreme Court of the United States

OCTOBER TERM, 1930

No. 43

UNITED STATES OF AMERICA,
Petitioner,

vs.

IRON CAP COPPER COMPANY,
Respondent.

BRIEF FOR IRON CAP COPPER COMPANY.

This case is before this Court upon a writ of certiorari to review a decision of the United States Circuit Court of Appeals for the First Circuit.

INTRODUCTORY STATEMENT.

This action was originally brought in the District Court of the United States for the District of Massachusetts by Iron Cap Copper Company to recover interest on certain amounts overpaid by said Iron Cap Copper Company for income and profits taxes for 1918 which were applied as credits on additional assessments for other years.

The case was heard in the District Court upon an agreed statement of facts and oral testimony by one witness on behalf of the Government. The Court found in favor of the plaintiff and entered judgment on June 24, 1929. (Rec. pp. 30-35).

The case was appealed by the Government to the United States Circuit Court of Appeals for the First Circuit, and the record there, in addition to the agreed statement of facts, contained certain additional facts as set out in the opinion of the District Judge and certain additional special findings. (Rec. pp. 20-29).

The United States Circuit Court of Appeals for the First Circuit affirmed the decision of the District Court and the Government filed a petition in this Court for a writ of certiorari to review said decision, said petition being granted by this Court March 17, 1930.

The question involved in this case is *when the credits were allowed,* that is, on which of the three following dates: (1) March 29, 1924, when the Commissioner certified a Schedule of Overassessments showing that the respondent (plaintiff) had been overassessed for 1918 in the sum of $180,322.66; (2) July 14, 1924, when the Collector determined what amount of the overpayment for 1918 was necessary to satisfy the additional assessments for other years, applied said amount against said assessments and reported back to the Commissioner showing the amounts of abatement and credit and the amount refundable as follows:

Abatement	$48,539.94
Credit	102,931.89
Refundable	28,850.83

(3) August 7, 1924, when the Deputy Commissioner cer-

tified to the Commissioner his approval and when the Commissioner signed the authorization to the Disbursing Clerk, the effect of which was to approve the action of the Collector, to fix finally the amount of the refund, and to authorize its payment.

The date of the allowance of the credit is material because if it was "allowed" *before* June 2, 1924 (the effective date of the Revenue Act of 1924) the legal result of the allowance is determined under the Revenue Act of 1921, while if it was "allowed" *after* June 2, 1924, the legal result is determined under the Revenue Act of 1924. It is the rule that interest on refunds is to be computed in conformity with the law in force at the time of the allowance of the refund:

> *United States* v. *Magnolia Petroleum Company,* 276 U. S. 160;
>
> *Blair, Commissioner,* v. *United States, ex rel. Birkenstock,* 271 U. S. 348;

and it is agreed by both the petitioner and the respondent that the same is true in the case of a claim for credit. (Petitioner's Brief, pp. 2-3).

If the credit in this case was allowed before June 2, 1924 and therefore under the Act of 1921, then interest on the credit would run *to* the date of allowance of the credit but only *from* six (6) months after filing of claim by respondent (plaintiff). If it was allowed after June 2, 1924, and therefore under the Act of 1924, then interest would run *from* date of payment of tax *to* the dates of the additional assessments against which the overpayment was credited.

The District Court and the Circuit Court of Appeals,

following the statement by this Court in *Girard Trust Company* v. *United States,* 270 U. S. 163, held that the date of allowance of the credit, like the date of allowance of the refund, was August 7, 1924, the date when the Commissioner signed his final schedule and authorized payment of the refund, that being the date when its "exact amount" was "finally fixed by competent authority" and that the respondent (plaintiff below) was, accordingly, entitled to interest on the amount of the credit under the Revenue Act of 1924.

The petitioner here contends that this decision was wrong and that the credit was allowed on March 29, 1924, when the Commissioner certified his first schedule which showed merely that there had been an overassessment. The respondent contends that the decision below was right and that the credit was allowed when the Commissioner finally fixed or approved its amount and authorized the refund. It is sufficient, however, in order to sustain the decree below, if it be found that the credit was allowed on July 14, 1924, the date when its amount was actually determined by the Collector and the credit actually applied.

STATEMENT OF FACTS.

The respondent (plaintiff below) duly filed its income and profits tax return for the year 1918, showing taxes due in the sum of $183,099.78, which amount was duly paid (Agreed Facts, Par. IV, Rec. p. 5). After an examination and audit the Commissioner determined that the respondent was liable to an additional tax for 1918 in the sum of $48,539.94 and on June 11, 1921, the Commissioner

made an additional assessment upon the respondent in that amount (Agreed Facts, Pars. VII-VIII, Rec. p. 5). This made a total assessment for 1918 of $231,639.72.

After various audits it was finally determined that the correct tax assessable upon the respondent for 1918 was $51,317.06 and that accordingly there had been an overassessment of $180,322.66 and on March 29, 1924, the Commissioner of Internal Revenue approved a "*Schedule of Overassessments*" which included the abovementioned overassessment upon the respondent for the year 1918 in the sum of $180,322.66. This schedule was transmitted to the Collector with the following "Authorization of Commissioner". (Agreed Facts, Pars. XII and XIV, Rec. pp. 6-7; Exh. 3, p. 12.)

"To the Collector.....District of Massachusetts

The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the 'Certificates of Overassessment' or 'Notices of Adjustment of Refund' attached thereto.

You will immediately check such items against the accounts of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated, in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts. (This applies only to income, war profits, and excess profits taxes.) Such

credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of Refunds and Credits (Form 7805-A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an appropriate memorandum made upon the taxpayer's account.

You will thereupon complete and certify this schedule and the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Revenue.

Date March 29, 1924.

D. H. BLAIR
Commissioner of Internal Revenue."

The Collector determined the respective amounts which were to be abated, credited and refunded and on July 14, 1924, returned the Schedule of Overassessments with the following certificate to the Commissioner. (Agreed Facts, Pars. XIII-XIV, Rec. p. 7; Exh. 3, p. 12.)

"CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date July 14, 1924.

Collector.....District of Mass.
M. E. NICHOLS"

Under the same date he also returned the subsidiary "Schedule of Refunds and Credits" (copy also annexed to Agreed Facts) with the following certificate (Rec. p. 13):

"CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items hereon are relisted as they appeared for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit.

Date July 14, 1924

M. E. NICHOLS
Collector.....District of Mass."

The Schedule of Overassessments as so returned by the Collector to the Commissioner showed the amount of abatement, $48,539.94, the amount of the credits, $102,931.89 (specifying particular taxes for other specific years upon which the credits were applied), and the amount to be refunded, $28,850.83. The subsidiary "Schedule of Refunds and Credits" again showed the amounts as listed "for refund or credit" on the Schedule of Overassessments but not the amount of abatement.

Without going into unnecessary detail regarding the taxes for other years, upon which taxes the $102,931.89, allowed as a credit, was applied, it is sufficient to state that the credit was all applied on *additional assessments*

and that the respective amounts so credited, the years to which the other taxes in question related, and the dates of the additional assessments were as follows. (Agreed Facts, Par. XV, Rec. p. 7. See also schedule attached to Collector's subsidiary "Schedule of Refunds and Credits".)

"Amounts Credited	Year Against Which Credited			Dates of Assessment
$ 6,300.77	Add'l	assessment	1917	8/18/18
50,962.85	"	"	"	5/25/20
59.85	"	"	1916	6/11/21
20,061.60	"	"	1917	6/11/21
20.04	"	"	1913	3/20/24
17.30	"	"	1914	3/20/24
14.74	"	"	1915	3/20/24
18.41	"	"	1916	3/20/24
25,476.33	"	"	1917	3/20/24
$102,931.89	Total amount credited."			

After the Collector had returned to the Commissioner the "Schedule of Overassessments" with the Collector's figures of abatement, credit and refund thereon and his subsidiary "Schedule of Refunds and Credits", again listing the amounts of the credits and the amounts of the refunds, the Deputy Commissioner certified to the Commissioner on August 7, 1924 (on the "Schedule of Refunds and Credits"), as follows (Rec. p. 13):

"CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed and the accrued interest, if any, listed in column 6 has been found due.

Date August 7, 1924

J. G. BRIGHT
Deputy Commissioner."

On the same date the Commissioner, on the same "Schedule of Refunds and Credits," signed the authorization for payment of the refunds in the following language (Rec. p. 13):

"AUTHORIZATION OF COMMISSIONER

To the Disbursing Clerk, Treasury Department:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due. Payment may, therefore, be made in the amounts shown in column 7.

Date August 7, 1924

D. H. BLAIR
Commissioner of Internal Revenue."

The amount of the *refund* was duly paid, and on February 21, 1928, in pursuance of a request by the respondent for an allowance of interest on its overpayment, the Commissioner advised the respondent of the

allowance of interest in the amount of $8,033.57 on $28,850.83, the amount *refunded,* from the date of payment of tax to August 7, 1924, the date of allowance of the refund. The schedule based on this computation and allowance of interest was approved on May 11, 1928, and payment was made on May 15, 1928. (Agreed Facts, Pars. XVII, XVIII, Rec. p. 8.)

The Commissioner declined to allow any further interest on account of the overpayment for the year 1918, and specifically no interest has been paid or allowed upon the amounts of the credits of $102,931.89. (Agreed Facts, Par. XX, Rec. p. 8.)

It was conceded below and is one of the special findings of fact made by the District Judge that there is no record of the actual date of applications of credits on the Collector's books and that the *official application of the credit by the Collector is the date on which he signs the subsidiary "Schedule of Refunds and Credits".* This date, in the present case, was July 14, 1924 (Rec. p. 29).

There are three possible dates upon which it may be argued the credits were "allowed". These dates are given above, but we repeat them here for convenience.

1. March 29, 1924, the date when the Commissioner signed and transmitted to the Collector his original "Schedule of Overassessments".

2. July 14, 1924, the date when the Collector (a) certified on the "Schedule of Overassessments" that he had checked the items of overassessments with the taxpayer's accounts and stated to the Commissioner the amounts which he had applied as abatements and credits on their accounts and the net amounts which he found to be refundable, and

(b) signed the subsidiary "Schedule of Refunds and Credits" again certifying the amounts which he had determined as the proper amounts of credit and refund.

3. August 7, 1924, the date when the Commissioner indicated his approval of the Collector's figures by signing the authorization for payment of the refunds.

Obviously, if the first of these dates is taken the allowance was made under the Revenue Act of 1921, while if either of the other dates is taken the allowance was made under the Revenue Act of 1924 and is governed by the provisions of that Act and the respondent (plaintiff) is entitled to the interest claimed.

The Government argues for the first of the three dates, namely, March 29, 1924, the date of the Commissioner's original Schedule of Overassessments. The respondent, on the other hand, argues that both under the authority of *Girard Trust Company* v. *United States*, 270 U. S. 163, and other decisions cited below, and as a matter of correct interpretation, the true date of allowance was August 7, 1924, when the Commissioner approved the amounts of the credits and refunds indicated by the Collector; or in the alternative, that the credits can not be said to have been allowed in any case earlier than July 14, 1924, the date of the Collector's certification on the schedules returned by him to the Commissioner, upon which schedules, for the first time the amounts of the abatements, credits and refunds to which the taxpayers were entitled were fixed and stated.

STATUTES WHICH MAY BE MATERIAL.

Revenue Act of 1921: (42 Stat. ch. 136)

"REFUNDS

Sec. 252 (a). That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' the Act of October 3, 1913, entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' the Revenue Act of 1916, as amended, the Revenue Act of 1917, or the Revenue Act of 1918, it appears that an amount of income, war-profits or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer:"

"INTEREST ON REFUNDS AND JUDGMENTS.

Sec. 1324. (a) That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows:

(1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or

(2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or

(3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit.

The term 'additional assessment' as used in this section means a further assessment for a tax of the same character previously paid in part."

Revenue Act of 1924: (43 Stat. ch. 234)

"OVERPAYMENTS.

Sec. 272. If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the excess shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the excess shall be credited or refunded as provided in section 281."

"CREDITS AND REFUNDS.

Sec. 281. (a) Where there has been an overpayment of any income, war profits, or excess-profits tax imposed by this Act, the Act entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' approved August 5, 1909, the Act entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or any such Act as amended, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

"INTEREST ON REFUNDS AND CREDITS.

Sec. 1019. Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part."

Revised Statutes, Section 3220:

(This section appeared as Section 1315 in the Revenue Act of 1921 and was reenacted without change as Section 1011 of the Revenue Act of 1924.)

"Sec. 3220. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector,

agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section."

Revenue Act of 1926: (44 Stat. ch. 27)

"CREDITS AND REFUNDS"

"SEC. 284. (a) Where there has been an over-payment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' approved August 5, 1909, the Act entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer."

"INTEREST ON REFUNDS AND CREDITS"

"SEC. 1116. (a) Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of

the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount.

(b) As used in this section—

(1) The term 'additional assessment' means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency under Title II or Title III of the Revenue Act of 1924 or of this Act;

(2) The term 'date of the allowance of the refund' means, in the case of any income, war-profits, or excess-profits tax, the first date on which the Commissioner signs the schedule of overassessments in respect thereof.

(c) This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this Act, even though such refund or credit was allowed prior to such date."

Revenue Act of 1928: (45 Stat. ch. 852)

"REFUNDS AND CREDITS"

"SEC. 322. (a) AUTHORIZATION. Where there has been an overpayment of any tax imposed by this title, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer."

INTEREST ON OVERPAYMENTS

"SEC. 614. (a) Interest shall be allowed and paid upon any overpayment in respect of any internal

revenue tax, at the rate of 6 per centum per annum, as follows:

(1) In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment of a tax imposed by the Revenue Act of 1921 or any subsequent Revenue Act, then to the date of the assessment of that amount.

(2) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner.

(b) As used in this section the term 'additional assessment' means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency of any income or estate tax imposed by the Revenue Act of 1924 or by any subsequent revenue act.

(c) Section 1116 of the Revenue Act of 1926 is repealed.

(d) Subsections (a), (b), and (c) shall take effect on the expiration of thirty days after the enactment of this Act, and shall be applicable to any credit taken or refund paid after the expiration of such period, even though allowed prior thereto."

Summary of Interest Provisions

It may be helpful to summarize briefly the provisions of these various Acts with regard to interest on refunds and on credits as follows:

Act of 1921, *Sec.* 1324 (*a*):

Interest on refund or credit *from* date indicated below to date of allowance.

1. If amount was paid under specific protest, then from date tax was paid.
2. If paid without protest but pursuant to additional assessment, then from time additional assessment was paid.
3. If paid without protest and not pursuant to additional assessment, then from six months after filing claim.

Act of 1924, *Sec.* 1019:

Interest allowed on refund from date of payment of tax to date of allowance of refund.

Interest allowed on credit from date of payment of tax to

1. Due date of amount against which credit is taken, but
2. If taken against an additional assessment, then to date of assessment.

Act of 1926, *Sec.* 1116:

Interest allowed on refund from date of payment of tax to date of allowance of refund.

Interest allowed on credit from date of payment of tax to

1. Due date of amount against which credit is taken, but
2. If taken against additional assessment under Revenue Acts of 1921, 1924 or 1926, then to date of additional assessment.

Act of 1928, *Sec.* 614:

Interest allowed on refund from date of overpayment of tax to date not more than thirty days before date of refund check.

Interest allowed on credit from date of overpayment to

1. Due date of amount against which credit is taken, but
2. If taken against additional assessment under Revenue Act of 1921, or any subsequent revenue act, then to date of additional assessment.

ARGUMENT

This respondent submits the following arguments and authorities in support of its position that the decree below should be sustained.

I.

The True Date of "Allowance" of the Credits Was August 7, 1924, When the Commissioner Finally Fixed and Approved Both Credits and Refunds

In *Girard Trust Company* v. *United States*, 270 U. S. 163 (decided March 1, 1926) it was squarely held that the date of "allowance" of a refund was the date when the Commissioner took his final action, namely, when he approved the "Schedule of Refunds and Credits" and ordered payment of the refund. In that case the Commissioner had signed his Schedule of Overassessments on December 9, 1922. This schedule was sent to the Collector with the usual instructions to examine the accounts of the taxpayers, to make the abatements called for and to apply the credits and report back the amounts of credits and refunds (for details of Commissioner's authorization see Form 7777—Rec. pp. 21-

22). The Collector reported back to the Commissioner as directed and, on January 16, 1923, the Assistant Commissioner confirmed the report and the Commissioner directed the refund. It was held that the date of allowance of the refund, and the date to which interest on the refund must run, was January 16, 1923, when the Commissioner finally directed the refund. At pages 170-171, Chief Justice Taft says:

> "The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and that a refund *or credit* should be granted, and *when he has made that decision finally,* he has allowed the claim for the refund or credit of the taxes paid within the meaning of the section.
>
> * * * * * * *
>
> The findings and the exhibits show that the course of business is that the Collector on receiving from the Commissioner the schedule as to the overassessment, examines his books and reports back to the Bureau the amount which should be credited on taxes due and the amount to be refunded, that this is examined by the Assistant Commissioner and then is delivered to the Commissioner, *who makes it effective by his approval.* Until it reaches him and is approved by him, the refund cannot be paid. *This we think is the real date of allowance. Until that time, the exact amount of the refund is not fixed finally by competent authority.* This date would seem to be just as certain and convenient from an administrative standpoint as that of the original decision of the Commissioner, and it is certainly more in conformity to the general purpose of Congress to relieve the overassessed taxpayer by paying compensatory interest on money unjustly taken and kept by the Government." (Italics ours.)

It seems reasonably clear that in the discussion just quoted the Supreme Court regarded credits and refunds in the same light and deemed the final date when the Commissioner approved the Collector's Schedule of Refunds and Credits to be the real date of allowance in either case.

It is the whole theory of the Government's brief that although the approval by the Commissioner of this final schedule, which included the authorization to the Disbursing Clerk to pay the refund, is the date of allowance of the *refund,* yet that the date of the original Schedule of Overassessments, which merely determined that the taxpayer had been *overassessed* for a given year, constituted an *allowance of credits* on additional assessments for other years, although the amount of those credits was not known to the Commissioner or determined by the Collector or the credits applied until long afterwards. This argument overlooks the fact that, under the opinion of the Court in the *Girard Trust Company* case, allowance of the refund involved not only a final decision that a refund should be paid but also a *final fixing of its amount.* Obviously the refund could not be "allowed" until its amount was fixed. And if the position thus taken by the Court was sound, that "the exact amount of the refund" must be "fixed finally by competent authority" (i.e. by the Commissioner) before the refund could be said to have been allowed, it must be equally true that the exact amount of a credit must be "fixed finally," and by competent authority, before the credit can be said to have been allowed.

In his original "Schedule of Overassessments" the Commissioner did not purport to fix the amount of either

credit or refund. He merely certified his decision that the taxpayer had been *overassessed* for a given year (1918) in a certain amount. He was not deciding, and indeed he could not decide, how much of the overassessment should be merely abated, how much should be credited on taxes for other years and how much should be refunded. For, as the record shows, the Commissioner had no knowledge of the status of the taxpayer's accounts, and only in the Collector's office was the necessary information available to determine how much of the overassessment found by the Commissioner was to be abated, how much to be credited and how much to be refunded. (Rec. p. 28). Before any of these items could be determined, the Collector, who is the Commissioner's subordinate and representative, must examine the taxpayer's accounts and ascertain (1) how much of the total assessment the taxpayer has paid, and (2) how much the taxpayer owes for unpaid taxes for other years. In this manner the Collector determines (1) what amount of the overassessment has not been paid and should therefore be abated, (2) what amount of the actual overpayment should be applied or credited on the unpaid taxes for other years, and (3) what is the balance of the overpayment, if any, which should be refunded.

If there are no unpaid taxes for other years, then the whole amount of the overpayment must be refunded. If there are unpaid taxes for other years, such amount of the overpayment as is necessary must be applied against those unpaid taxes, and the balance must be refunded. Obviously, *the amount of credits plus the amount of refund must in every case equal the total amount of*

overpayment. The amount of the credit and the amount of the refund are, therefore, of necessity finally fixed and determined *simultaneously*. The credit and the refund are complements of each other. If the amount of the credit were finally fixed at any earlier date the amount of the refund would necessarily be fixed by the same act.

The same necessity which exists under the present practice, for the Commissioner to be advised by the Collector as to the state of the taxpayer's account—as to the amount of overpayment, if any, and as to the amount of unpaid taxes for other years—before a credit can be allowed, existed also under the earlier practice. It is not a new condition. We quote from the record as follows:

> "In the early practice, before the commissioner could prepare a schedule of credits or a schedule of refunds or a schedule of abatements, he had to have information from the collector's office as to what taxes were due and how much the taxpayer had paid. Before the commissioner issued a schedule of credits the commissioner had to know how much the taxpayer had overpaid on the year in question. An overpayment would not be allowed to be credited without evidence of the actual overpayment." (Rec. p. 28.)

It would have been possible for this Court in the *Girard Trust Company* case to regard the date of the Schedule of Overassessment as the date of allowance of both credits and refunds, even though an investigation of facts in the Collector's office, following that original schedule, was necessary in order to determine the *amounts* of either credits or refunds. It might have

held that the Commissioner's ignorance of these facts and figures, which were necessary to fix the *amounts* of the credits or refunds, was not material because both could readily be computed when the Collector had examined the accounts. The Court, however, chose to regard the "allowance" of the refund as a *conscious act*, which could only become effective when the Commissioner *knew* the facts and could determine the *exact amount* which should be refunded. The allowance of a refund was a definite decision that a stated amount of refund was due the taxpayer. For in fixing as the date of "allowance" the date of the Commissioner's final approval of the schedules after they were returned to him by the Collector, the Court said: (p. 171).

> "This we think is the real date of allowance. Until that time the exact amount of the refund is not fixed finally by competent authority."

This language indicates that this final date was selected, not because the Commissioner then ordered the payment made but *because that was the date when the exact amount was finally fixed.*

The distinction between the certifying by the Commissioner of the "Schedule of Overassessments" and the allowing of a credit has been regarded by the United States Board of Tax Appeals as an obvious distinction, for in the *Appeal of Dickerman & Englis, Inc.*, 5 B.T.A. 633, the Board said, page 635:

> "It would seem unnecessary to point out the distinction between a determination that the taxpayer has made an overpayment of tax and a determination that the taxpayer is entitled to a credit or to a refund."

With only one exception, and that apparent rather than real, all the decisions of the lower courts which have passed upon this question of when a credit is allowed are unanimous in sustaining the contentions of this respondent.

Swift and Company v. *United States*, 68 Ct. Cls. 97;

Iron Cap Copper Company Case, (U. S. D. Ct. Mass.) 31 Fed. (2nd) 628;

Iron Cap Copper Company Case, (U. S. C. C. A. 1st Circ.) 35 Fed. (2nd) 560;

Boston Buick Case, (U. S. D. Ct. Mass.) 27 Fed. (2nd) 395;

Boston Buick Case, (U. S. C. C. A. 1st Circ.) 35 Fed. (2nd) 560;

Andrews Steel Company v. *U. S.*, Ct. of Cls. June 2, 1930;

West Leechburg Steel Co. v. *United States*, 40 Fed. (2nd) 131;

Atlas Powder Co. v. *United States*, 40 Fed. (2nd) 136;

Pottstown Iron Co. v. *United States*, 40 Fed. (2nd) 142.

The only apparent dissent is that in *Penn Smokeless Coal Company vs. United States*, 34 Fed. (2d) 205, in which, as the United States Circuit Court of Appeals in the present cases said, "the sitting judge * * * inadvertently misconstrued the opinion of the Chief Justice in the *Girard Trust Company* case." (Rec. p. 41.) The mistake of the court in that case is so evident that it may well be assumed the court itself would have been the first to correct it if it had but been called to his attention.

In that case it appears that the Schedule of Overassessments was signed and transmitted to the Collector on January 13, 1926; that the Collector on January 28, 1926, certified and returned to the Commissioner the Schedule of Refunds and Credits and that the approval and authorization of the Commissioner was signed on March 11, 1926. The issue was whether the credit was allowed under the Revenue Act of 1926 which became effective February 26, 1926, or under the previous act, that of 1924. It was held that the credit was allowed prior to the effective date of the 1926 Act and the language of the court indicates the view that the credit was allowed when the Commissioner signed the original Schedule of Overassessments. This is in accord with the Government's theory. An examination of the case shows however, that it was decided under a palpable misapprehension of what Chief Justice Taft had stated in *Girard Trust Company vs. United States*, for in the course of its opinion the Court says: (pp. 208-209.)

> "In Girard Trust Co. vs. United States, supra, the Court, in the opinion by Mr. Chief Justice Taft, laid down a rule, as follows: 'A claim for refund or credit is allowed within the meaning of the statute when the Commissioner approves the schedule in whole or in part for transmission to the proper accounting officer for credit or refund.' * * * * * Applying the rule laid down in Girard Trust Co. vs. United States to the actual procedure in the Bureau of Internal Revenue, the credit to the plaintiff was allowed when the Commissioner approved the Schedule of Overassessments * * * * * for transmission to the Collector, and thus directed the latter to credit plaintiff with the amount of its overpayments of 1918 taxes against other taxes owed by it."

This statement by the District Court of "the rule laid down" by the Chief Justice in the *Girard Trust Company* case is erroneous and is directly *contra* to what the Chief Justice actually said. What the Chief Justice did say in the *Girard Trust Company* case appears at pages 169, 170, 171 thereof, as follows:

> "The Treasury Department by its regulations of 1922 construed this provision as follows:
>
> > 'A claim for refund or credit is allowed within the meaning of the statute when the Commissioner approves the schedule in whole or in part, for transmission to the proper accounting officer, for credit or refund.' • • •
>
> We cannot concur, however, in the view of the Treasury Department that the date of the allowance of the claim as intended by the statute is the date when the Commissioner first decides that there has been an overassessment and sends upon a proper form his decision to the Collector of Internal Revenue, who made the collection and keeps the account with the taxpayer."

And obviously the *decision* in the *Girard Trust Company* case was directly *contra* to the regulation quoted. In other words, what the Pennsylvania Court cites as a rule laid down by the Chief Justice, was in reality a rule which the Chief Justice said the Treasury Department had laid down but in which this Court refused to concur.

The following cases by analogy support the *dictum* of this Court in the *Girard Trust Company* case, that the Commissioner's final approval is the "real date of allowance" as to credits as well as refunds, for they indicate that a claim is not "allowed" until its *amount* is fixed, or until the official authorized to make the allowance, being advised of the amount, approves it.

In Re Estate of Hall, 155 Minn. 46, the Probate Court had made findings of fact and conclusions of law to the effect that the husband should

> "have and take his distributive share of the estate * * * under the provisions of the statutes of this state, the same as if said deceased had died intestate, in lieu of the provisions made for him by * * * said will".

The executor appealed under a statute which permitted appeal from an order or decree by which a "distributive share is allowed or payment thereof directed, or said allowance or direction refused". The Court said, p. 49:

> "The order does not purport to assign or distribute the property or any part thereof. It merely decides that respondent's rights are to be determined by the statute and not by the will. It does not give respondent the right to any specific property, or to any specific part or amount of the property. A further order or decree is necessary to carry it into effect. Before respondent will be in position to demand or receive any part of the property, a further order or decree must be made assigning it to him. * * * * * We think that respondent's claim to a distributive share of the personal property is not 'allowed' within the meaning of the statute, until an order or decree is made under which he is entitled to demand or receive it, or some part of it."

In *McKnight vs. United States*, 13 Ct. Cl. 292, affirmed 98 U. S. 179, it was held that allowance of a claim was the final action by the officer authorized under the law to act in the matter of such allowance and that all previous steps of accounting officers and others were merely preliminary.

In *People vs. Gilroy*, 82 Hun. 500, which involved the

allowance of a claim against a municipal corporation, Mr. Justice Follett used the following language: (p. 507)

> "To audit an account is to examine and ascertain whether it is accurate. To allow an account or claim is to accept or admit it as a legal demand. The authority to audit and allow an account primarily implies the right to determine whether it is an accurate and just claim".

It is difficult to see how a claim can be "accepted or admitted as a legal demand" unless or until its amount is known.

In *United States vs. Kaufman*, 96 U. S. 567, which involved a claim for refund of a special stamp tax, which claim had been allowed by the Commissioner, this court said (p. 570):

> "To say the least, the allowance of a claim under this statute is equivalent to an account stated between private parties, which is good until impeached for fraud or mistake".

An "account stated" necessarily involves a fixing of the amount.

The essence of the transaction, where a credit on account of overpayment of tax for one year is "allowed" against unpaid taxes for other years, is merely that one of two adverse claims is set off against the other. It would be foreign to any known practice to hold that, as between private parties, one of such claims could be set off against the other before their respective amounts had been determined, so that the balance could be struck and the account between them definitely stated.

Nor is there anything "ungrammatical" or "incongruous" in holding that the allowance of both refunds

and credits takes place on the date *when the Commissioner for the first time fixes and determines the amount of each,* namely, when he approves the *final schedule.* This conclusion is consistent with both the decision and the *dictum* in the *Girard Trust Company* case; it is also consistent with the Government's own theory in this case that the Commissioner must act *personally* in the allowance of either credit or refund. It cannot matter that, with respect to the refund, it involves an order for payment, while in the case of the credit it is only a ratification. It is conceded in the Government brief (p. 25) that an approval or ratification "is a recognized meaning of allowance."

If the word "allowance," is interpreted in the sense of "approval," it may look either forward or backward, and the fancied difficulty which confronts counsel for the Government readily disappears. While in the case of a refund approval must, of course, precede the payment, yet in the case of a credit it may be either before or after the credit is applied. If in the usual course the approval follows the application, any error which the Collector has made can be corrected, because the credit in the nature of things cannot be final until the approval is given.

But it appears from the record that *if* the Schedule of Refunds and Credits discloses *no refundable items* of tax and no interest on credits

> "the instructions were to mark the original schedule of refunds and credits as cancelled, place it in a special loose leaf binder for reference, if necessary, to likewise mark the Bureau record copy as cancelled, indicate where the original was on file and file the Bureau record copy in its proper place according to the serial number"

and that in these cases no final certificate was signed by the Commissioner of Internal Revenue. (Rec. p. 26.)

But, even in those cases where the Commissioner does not actually sign the final schedule, *it is not difficult to find, in the procedure indicated, a sufficient official action on the part of the Commissioner approving the Schedule of Refunds and Credits* as returned to him by the Collector. There must be the same examination of the schedule even where there are no refunds to be paid and no interest to be paid on allowed credits, because there is the same necessity for checking the action of the Collector to see that the amounts of abatements and credits which he has allowed do not exceed the amount of the overassessment approved by the Commissioner on his original Schedule of Overassessments. (Rec. p. 29.) In other words, the "cancellation" of the Schedule of Refunds and Credits and the filing of the Bureau copy, after the accounts have been thus checked in the Commissioner's office, may well be deemed equally effective as a final allowance of credits as if the schedule had contained items of refund or interest and so had been signed by the Commissioner to authorize the refund or interest payments.

Indeed, the cases where an actual signing of the authorization to the Disbursing Clerk is not required must be very rare as the Schedules of Overassessment and the subsidiary Schedules of Refunds and Credits ordinarily refer not to a single taxpayer but to a large number of taxpayers, and obviously if any one of these was entitled to a refund, or to interest on an allowed credit, the authorization to the Disbursing Clerk would be signed by the Commissioner. It also seems a fair assumption

that credits allowed would ordinarily carry interest so that the authorization to the Disbursing Clerk would be signed by the Commissioner simply for that reason, if for no other. We assume it will not be argued that the signing by the Commissioner of the authorization to the Disbursing Clerk does not constitute his approval of the entire Schedule of Refunds and Credits even though there were but a single refund or interest item to be paid.

It is argued for the Government that a refund can not be made until after the credit has been allowed and applied and it is attempted to be inferred that some substantial time must elapse between the allowance of the credit and the allowance of the refund. No good reason appears, however, why the allowance of refund and credit may not be *simultaneous*. It is certainly clear that neither credit nor refund can be allowed until it has been found and determined that the taxpayer has *overpaid* his proper tax. It is equally clear that the *amounts* of credit and refund respectively are fixed and determined at one and the same time, because their sum equals the overpayment.

Finally, it may be appropriate, as bearing on the view taken by the Treasury Department itself, as to the date of the allowance of the credit in the case now under consideration, to refer to the so-called "Certificate of Overassessment" (not to be confused with the Schedule of Overassessments which was signed March 29, 1924) which was sent to this respondent (plaintiff) with the refund check *after* the final Schedule of Refunds and Credits which was signed on August 7, 1924. This Certificate of Overassessment appears on page 14 of the Record. It bears no date but it obviously *followed* the

final approval of the Schedule of Refunds & Credits by the Commissioner, because it comes from the Commissioner's office, indicates the amount of abatement, the amounts of the credits in detail with the particular additional assessments for other years on which the credits have been applied by the Collector, and states the amount of the refund; and it purports to carry the treasury check for the refund. It will be noted that this Certificate of Overassessment states that the amount of the overassessment "*will be* abated, credited or refunded as indicated below". Even at this late date, therefore, the credit is apparently to be made in the future.

It is suggested in the Government's brief (p. 13) that this argument is "unsound and misleading," and reference is made to the record in this case (p. 21) as authority for the statement that the Certificate of Overassessment and the Schedule of Overassessments were forwarded together by the Commissioner to the Collector. As we understand the record, the statements on page 21 refer to an earlier procedure. But however this may be, the actual Certificate of Overassessment in this case, (Rec. p. 14) shows the details above described and it purports to carry the treasury check for the refund. Therefore, it must have been *sent out either by the Commissioner or with his express authority after* the Collector's schedules had been returned to him and he had signed the final schedules under which the refund was paid.

II

In Any Event the Date of "Allowance" Could Not Be Earlier Than July 14, 1924, the Date of the Collector's Subsidiary "Schedule of Refunds and Credits"

Even if it were to be held that the allowance of the credit precedes the date of approval of the final schedules by the Commissioner, it is certainly clear in any case that the amount of the credit was not "finally fixed by competent authority" and, consequently, cannot be regarded as "allowed", at any date earlier than the date when the Collector certified the "Schedule of Refunds and Credits," which he returned to the Commissioner, namely, July 14, 1924.

In *Boston Buick Company* v. *United States*, 27 Fed. (2nd) 395, the District Court found it unnecessary to decide whether the real date of allowance was the date when the Collector returned his schedules to the Commissioner or the date when the Commissioner finally approved those schedules, because either date was subsequent to June 2, 1924, the effective date of the 1924 Act. Judge Brewster, however, in delivering the opinion of the Court, indicated his clear opinion that, whatever date should be taken as the date of the allowance of the credit, it certainly was *not* the date when the Commissioner signed his first schedule showing that the taxpayer had been overassessed. The Court there said, page 396:

> "However, I think, in view of *Girard Trust Company* v. *United States, supra*, it can be taken as settled

that the transmission of the schedule of overassessments does not constitute an allowance of either a credit or a refund. A ministerial act of another administrative officer is necessary before it can be determined that there will be any credit, or before the exact amount of it can be ascertained. * * * Until then, to borrow from the language of the Chief Justice in the Girard Trust Company case, the exact amount of the credit was 'not fixed finally by competent authority' ".

The form of the transaction and the language of the communications between the Commissioner and the Collector amply support this view. The authorization of the Commissioner on the original Schedule of Overassessments is directed to the Collector and contains the following significant language:

"The amounts listed in column 4 as *overassessments* (or *reductions of tax liability*) are hereby approved. * * * .

You will immediately *check such items against the accounts* of the several taxpayers *and determine whether the amounts* in which the tax liabilities have been reduced *should be respectively abated*, in whole or in part and make such abatements * * .

If any part of any such item *is found to be an overpayment* you will examine all accounts of the taxpayer for other periods *and apply the overpayment as a credit against the taxes* due, if any, making the appropriate entries in your accounts * * * . Such credits will be entered in column 9 and placed in column 5 of a subsidiary schedule of refunds and credits.

The balance, if any, of the overpayment will be entered in column 12 and placed in column 4 of the subsidiary schedule referred to above". (*Italics ours.*)

Nothing in this authorization purports to be an allowance of either a *credit* or a *refund*. It is merely a statement of the amounts in which taxpayers have been *overassessed* and a direction to the Collector *to examine the accounts and determine* to what extent the taxpayers' liability *should be abated;* and if the proper amount of tax, as thus determined by the Commissioner, has been *overpaid* then the Collector is *to examine* all accounts of the taxpayer for other periods and *apply the amount of the overpayment as a credit* on these other taxes. Then if there remains any balance of the overpayment, such balance is to be listed as the amount refundable to the taxpayer.

The language of the statutes which we have quoted above indicates clearly that *before any credits can be allowed the fact of overpayment must appear.* In Section 252 (a) of the 1921 Act it is provided that

> "If upon examination of any return of income * * * *it appears that an amount of* * * * *tax has been paid in excess of that properly due,* then * * * the amount of the excess shall be credited against any income * * * taxes * * * due from the taxpayer, etc." (Italics ours.)

Section 281 (a) of the 1924 Act provides that

> "Where there has been an overpayment, etc., the amount of such overpayment shall be credited, etc."

Until the Collector has made his investigation of the taxpayer's accounts and has ascertained how much of the overassessment has been actually overpaid and how much of this overpayment is to be claimed by the Government on unpaid taxes for other years, neither the Collector nor anyone else can determine what the credit

is to be, *or even that there is to be a credit at all.* It is conceded on the part of the Government that there is no official action by the Collector in the matter until he certifies the schedules which are to go back to the Commissioner, and that "the official application of a credit * * * * is the date on which he signs the subsidiary schedule." (Rec. p. 29.) This schedule he certified in the present case on July 14, 1924, and if the date of "allowance" of the credit is to be moved back from the date when the Commissioner affixes his final approval to the schedules, it can not be fixed earlier than the date when the Collector, on behalf of and under the express authorization of the Commissioner, first determined the amount of the credit. The Collector is the subordinate of the Commissioner and his action in determining and applying the credits is taken under the Commissioner's *express authority.* His action, therefore, may be deemed the action of the Commissioner for the purpose of "fixing finally by competent authority" the "exact amount" of the credit. This act of the Collector is the "ministerial act of another administrative officer" which is referred to by Judge Brewster in *Boston Buick Co.* v. *United States,* supra, as being "necessary before it can be determined that there will be any credit or before the exact amount of it can be ascertained."

It is argued on behalf of the Government that the date of the allowance or application of these credits by the Collector on the taxes for other years cannot possibly be treated as the date of the "allowance," because the authority and duties of the Commissioner and of the Collector are statutory, and to permit the Collector to

"allow" a credit would involve a delegation to the Collector of a power or authority which is vested by law only in the Commissioner.

It is quite true that the authority and duties of the Commissioner and the Collector are prescribed by statute. The brief for the Government (pp. 14-15) quotes, from the Revenue Act of 1921, a provision authorizing the Commissioner, under Regulations prescribed by the Secretary of the Treasury, "to remit, refund and pay back all taxes erroneously or illegally assessed or collected," etc. and, from the Revised Statutes, a provision that the Collector is chargeable for all taxes committed to him for collection. But the Statutes also provide (U. S. C. A. Title 26, Sec. 2) that the Commissioner

> "shall have general superintendence of the assessment and collection of all duties and taxes imposed by any law providing internal revenue; and shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps and other matters pertaining to the assessment and collection of internal revenue."

And, among the "duties of collectors and agents" (U. S. C. A. Title 26, Sec. 34), we also find that Collectors "shall see that all laws and regulations relating to the collection of internal taxes are faithfully executed and complied with," etc.

Both the Revenue Act of 1921 (sec. 1303) and the Revenue Act of 1924 (sec. 1001) give the Commissioner express authority, with the approval of the Secretary of the Treasury, to prescribe "all needful rules and regulations for the enforcement of this act"; and, as set out in U. S. C. A. Title 26, Sec. 1245, the following language is added:

"and wherever the mode or time of assessing or collecting any tax which is imposed is not provided for, the said commissioner may establish the same by regulation."

We find in the regulations promulgated under the 1924 Act (Reg. 65, Art. 1305) the following:

"Action on claims for credit.—Upon receipt by the collector of a claim for credit on Form 843, he will make proper record thereof in his office, and, *except in the case of claims covering taxes assessed on the basis of returns on Form* 1040 *A and on the basis of such other returns as the collector is authorized by the Commissioner to audit*, forward the claim immediately to the Commissioner, irrespective of whether or not a claim for refund of the tax now claimed as a credit has previously been filed. Due notice will be given the collector and the taxpayer of the action taken on the claim. *Claims for credit covering taxes assessed on the basis of returns which the Commissioner has authorized the collector to audit shall be examined by the collector.* He shall then notify the taxpayer *of his action on the claim* and the taxpayer may, upon receipt of such notice, appeal to the Commissioner from the action of the collector.

If a claim is allowed against additional taxes due for other years, but such other taxes have not yet been assessed, the amount of the excess of such taxes over the overpayment shall be assessed or the excess of the overpayment of such taxes due shall be refunded as the case may be. The effective date of the filing of the claim for credit shall be the actual date of presentation to the collector.

Under no circumstances will a taxpayer be entitled to credit for an alleged overpayment of tax prior to

the allowance of such credit by the Commissioner." (Italics ours.)

Returns on Form 1040-A are the individual income tax returns for net incomes not exceeding $5,000; and the above regulation obviously prescribes a procedure whereby the Collector is expressly authorized to audit certain returns and *to allow or disallow claims for credit* upon his own individual decision subject, however, to an appeal to the Commissioner if the taxpayer is not satisfied with the Collector's action. The language of the regulation quoted above, having in mind particularly the last short paragraph, seems to indicate, as regards these claims for credit which were to be passed on by the Collector, either that the action of the Collector in allowing a credit was deemed an allowance by the Commissioner or else that the claim was not regarded as allowed until the Commissioner had approved the Collector's action either on an appeal by the taxpayer or under the general practice.

In the regulations under the Revenue Act of 1921 this practice is not so clearly defined as in the regulation above quoted, but those regulations, (Reg. 62, Art. 1035), appear to indicate that the same practice prevailed under said Act of 1921 under which the Collector audited certain returns and personally allowed or disallowed claims for credit.

There is, therefore, nothing inconsistent with the Commissioner's prerogative and authority in holding that, when the Collector, after receiving the Certificate of Overassessment from the Commissioner, first examined the taxpayer's account for the year in question and so determined the amount the taxpayer had overpaid, and

then examined the accounts for other years and so determined what taxes for those years were unpaid and how much of the overpayment was to be applied thereon, and made such application, he then, as the agent and representative of the Commissioner for this purpose, "allowed" the credit. The Government brief concedes that the relation between the Commissioner and the Collector is such that "the Commissioner's directions are to be carried out by the Collector," (p. 15) and the language above quoted from the Schedule of Overassessments which the Commissioner sent to the Collector, shows that the Commissioner was giving directions to the Collector, while the subsequent procedure shows that the Collector was carrying out those directions.

Under the practice above discussed the Collector, in connection with returns of income under $5,000, was given *general* authority to allow credits, whereas under the practice we are discussing in the present case, which was followed where larger amounts were involved, the authority to the Collector is *specific* in each case.

In any large corporate organization many acts, which are the function of the head of the organization to perform, must of necessity be performed by other individuals under delegated authority; and this must inevitably be true of such a large and complicated organization as the Bureau of Internal Revenue of the United States. The practice authorized in Article 1305 of Regulations 65, above quoted, under which the Collector acts on certain claims for credit, is one illustration of this. Another is found in the discretionary power which the Commissioner confers upon Collectors to grant extensions of time, under certain conditions, for filing income

tax returns. The Revenue Act of 1924, Sec. 227, expressly gave this discretion to the Commissioner and required him to keep a record of every such extension and the reason therefor, and yet it appears that Collectors, under general orders of the Commissioner, were authorized to grant such extensions. In Cum. Bul. IV-2, p. 69, Mim. 3361, which was a general communication from the Commissioner to the Collectors dated November 20, 1925, appears the following:

> "Collectors of Internal Revenue are hereby *authorized to grant extensions of time* for filing returns of income in cases of the absence, sickness or inability to secure data to make a correct return. In the granting of such extensions the following must be observed.
>
> * * * * *
>
> (Here are stated various requirements or conditions among which is the statement that communications granting extensions should be signed in the name of the Commissioner by the Collector with the statement):
>
> *"The Commissioner's name should be typed and the Collector's name written with pen and ink."*

The last paragraph in this communication reads as follows:

> "Due publicity should be given the mimeograph *so as to avoid applications for extensions of time for filing income tax returns being submitted direct to the Commissioner's office."* (Italics ours.)

The Revenue Act of 1918 similarly vested in the Commissioner a discretion to grant extensions of time for filing returns, and yet we find, in Cum. Bul. No. 2 (January—June 1920) page 202, Mim. 2383, a provision much

simpler in form than the later mimeograph but yet authorizing Collectors in cases of sickness or absence to grant extensions of time not to exceed thirty (30) days.

As a matter of fact the Government does not cite in its brief any provision of the Statutes which provides expressly that the Commissioner must *personally* allow credits. The Revenue Act of 1918, Sec. 250 (b), the Revenue Act of 1921, Sec. 250 (b), the Revenue Act of 1924, Sec. 271, and the Revenue Act of 1926, Sec. 271 do provide that as soon as practicable after returns are filed the Commissioner shall examine them and determine the correct amount of tax. They provide in substance that any overpayment *shall be credited* on taxes for other years and the balance refunded to the taxpayer. Strictly the question which the Commission is directed to determine is merely *the amount of the tax.* The allowance of the credit, depending as it does on the state of the taxpayer's accounts for other years, may well, so far as the Statutes are concerned, be determined *in toto* by the Collector, when once he has been advised by the Commisioner how much has been overassessed and has ascertained from his own records how much of the overassessment has been paid.

If it is argued that this action of the Collector can not be final because it may be reversed or disapproved by the Commissioner, the answer is obvious, that it may well be deemed final unless and until so reversed or disapproved. As the court said in the *Girard Trust Company* case, page 170:

> "The mere fact that he can reverse a final allowance does not prevent its being a final allowance, any more than when a court renders a judgment, its ability with-

in the term to set it aside or change it affects its finality, if it is not changed."

One other consideration mentioned by the court in the *Girard Trust Company* opinion namely, that of justice to the taxpayer whose money has been withheld by the Government, is worthy of notice here. While the date of allowance of a credit plays no part in the computation of interest under the Revenue Act of 1924, it *was* important under the Revenue Act of 1921, since interest on the credit ran *to that date*. These considerations therefore are pertinent in fixing what constituted the date of allowance under the 1921 Act, and no reason appears for reaching a different conclusion as to date of allowance under the 1924 Act. In the *Girard Trust Company* case this Court said (p. 170):

> "It is said that this is a remedial statute and was intended to require the Government to recoup the taxpayer unjustly dealt with by paying interest during the whole time the money was detained. That was doubtless its general purpose. But the statute is to be construed in the light of the difficulties of the Government bookkeeping and accounting."

It was this latter consideration, the Court said, which led Congress to provide for interest to date of allowance rather than to date of payment of refund and thereby to "qualify its desire" to do complete justice to the taxpayer; and which induced the Court to hold that the words "to the date of such allowance" did not carry interest to the date when the refund was paid.

The consideration due the taxpayer in the matter of interest is as important in the case of a credit as in that of a refund. Every consideration of justice dictates that

interest on the amount applied as a credit (under the 1921 Act) should run, if possible, to the date of such application, particularly as the taxpayer is charged with interest on his unpaid tax to the date of actual payment.

> Revenue Act of 1921, Sec. 250, Reg. 62, Art. 1003;
> Revenue Act of 1924, Sec. 276, Reg. 65, Art. 1261.

The date when the Collector returns the Schedule of Overassessments to the Commissioner with the subsidiary Schedule of Refunds and Credits is as definite, from the viewpoint of Government bookkeeping and accounting, as the date when the Commissioner first signs the Schedule of Overassessments for transmission to the Collector. The language of this court in the *Girard Trust Company* case. which was applied there to the date of the Commissioner's approved of the final schedule, is equally appropriate here either to that date or to the date when the Collector applies the credits and returns his schedules to the Commissioner. The Court said (p. 171):

> "This date would seem to be just as certain and convenient from an administrative standpoint as that of the original decision of the Commissioner, and it is certainly more in conformity to the general purpose of Congress to relieve the overassessed taxpayer by paying compensatory interest on money unjustly taken and kept by the Government."

III

Neither the Practice of the Bureau of Internal Revenue in Treating the Date of the Original Schedule of Overassessments as the Date of Allowance of Credits Nor the Action of Congress (in the Revenue Act of 1926) in Fixing That Date as the Date of Allowance of Refunds is Material

It is stated in the record in this case (p. 29) that the Bureau practice has treated the date of signing the Schedule of Overassessments as the date of allowance of a credit; although it is conceded in the Government's brief (p. 33 note) that for a period of between four and five months, beginning shortly after the decision in the *Girard Trust Company* case, (i.e. while Treasury Decision 3850, Cum. Bul. V-1, p. 354 was in effect) a credit, like a refund, was deemed to be allowed when the Commissioner signed his final Schedule of Refunds and Credits. It is intimated in the Government's brief that Treasury Decision 3850 was "a hurried and ill considered" acceptance of the *dictum* in the *Girard Trust Company* case (p. 34 note); and it is argued that this practice of the Bureau, coupled with the action of Congress in the Revenue Act of 1926, in fixing the time when *refunds* should be deemed to be allowed, should be controlling also in fixing the allowance of a *credit* at the time the Commissioner signs the original Schedule of Overassessments.

There are several answers to this suggestion:

First, that while the construction given by the Department is "entitled to great respect," nevertheless

> "if it (that construction) is not in conformity to the true intendment and provisions of the law, it cannot be permitted to conclude the judgment of a court of justice. * * *
>
> The present question, then, must be decided upon the same principles by which we ascertain the interpretation of all other laws; by the intention of the Legislature as it is to be deduced from the language and the apparent object of the enactment." *United States* vs. *Dickson,* 15 *Peters* 141, 161-162;

Second, that the court is not bound in any case by such construction and that

> "if such interpretation has not been uniform, it is not entitled to such respect or weight, but will be taken into account only to the extent that it is supported by valid reasons." (Citing numerous cases.) *United States* vs. *Missouri Pacific Railroad,* 278 U. S. 269, 280;

Third, that the same practice in the Department had existed apparently with entire uniformity as regards allowance of *refunds* until the decision of this court in the *Girard Trust Company* case, which expressly disapproved the practice. As Mr. Justice Wilson noted in the opinion of the Circuit Court of Appeals in this case (Rec. p. 40):

> "It (the Treasury Department) also, prior to the decision in the Girard Trust Company case, had the same regulation as to the date of allowance of refunds; yet the court in that case held that a regulation of of the Treasury Department and its practice in this respect was not in accord with the statute and that it

did not control the plain effect of the acts of the Commissioner and the Collector. No good reason is now shown why the Department regulation as to the allowance of credits should control what appears to be the only reasonable inference to be drawn from the facts.";

Fourth, the practice of the Bureau in disregarding the *dictum* of this court (March 1, 1926) in the *Girard Trust Company* case, which *dictum* has been followed since that time with practical uniformity by the lower courts, is hardly entitled to consideration. Whether or not Treasury Decision 3850, which was in accord with the *dictum* of this court in holding that credits, as well as refunds, were allowed when the Comissioner signed his last schedule was "hurried and ill considered," certainly the rescission of that Treasury Decision in August 1926 in the face of that *dictum,* had no justification.

The persistence of the Department in readopting and then following its former practice, in the face of that *dictum* and those decisions of the lower courts, of course furnishes no reason for changing the rule thus laid down by this court and the lower courts, if that rule appears otherwise to be a sound interpretation of the law.

It is also claimed for the Government that Congress, by Section 1019 of the Revenue Act of 1924, approved the provisions of Regulations 62, Art. 1040, promulgated under the Act of 1921, which stated that a claim for refund or credit was allowed when the Commissioner approved the Schedule of Overassessments; and that Congress again approved the practice by Section 1116 (b) (2) of the Revenue Act of 1926, which provided that the date of allowance of a *refund* was the date of the Schedule of Overassessments.

Regarding the first of these contentions, it is perhaps sufficient to say that Section 1019 of the Revenue Act of 1924, providing that *upon* the allowance of a credit or refund interest should be allowed and paid, can hardly be deemed an approval of a regulation of the Department stating the *time* at which such claim was to be regarded as allowed. Moreover, the Regulation in question (Reg. 62, Art. 1040) was the very one which this Court in the *Girard Trust Company* case *expressly disapproved.* (pp. 169-170.)

So far as the Revenue Act of 1926 is concerned, it should be noted that, while the date of allowance of a refund still continued to be material under the 1926 Act because interest ran *to that date,* the date of allowance of a credit had become immaterial under the Act of 1924 and is still immaterial, as interest under the 1924 Act and under each of the Acts since that time is computed either to the due date of the amount against which the credit is taken or, if taken against an additional assessment (under the Revenue Act of 1921 or any later Act), then to the date of the additional assessment. After 1924, the date of allowance of the credit no longer figured in the computation of the interest on the credit. Under these circumstances the fact that Congress, while providing that a refund should be deemed allowed when the original Schedule of Overassessments is signed, said nothing about the time when a credit should be allowed, would seem rather to indicate that Congress intended to express no opinion upon this question of allowance of credits.

The Government undertakes to argue from the fact that the *Girard Trust Company* case was argued in Jan-

uary of 1926, before the final passage of the Revenue Act of 1926, (on February 26 of that year) that Congress undertook to give express approval of the Department practice after it was aware that in the *Girard Trust Company* case that practice had been challenged. These defendants know of no rule under which it is to be presumed that Congress either knows or is charged with notice of the legal questions raised in cases pending before this Court or of the contents of arguments and briefs therein. On the other hand, there is a fairer presumption, namely, that this Court, deciding the *Girard Trust Company* case after the Revenue Act of 1926 had become effective, knew what Congress had provided therein as to the time of allowance of refunds and by its decision definitely overruled the argument now made by the Government. If the court in that case thus definitely overruled this argument, where Congress had expressly approved the practice of the Bureau as to the allowance of refunds, how much force can now be given to that argument where Congress has not undertaken to indicate in any way its view as to the date of allowance of a credit.

CONCLUSION

Accordingly, the conclusion indicated not only by the *dictum* of this Court but also by a substantially uniform line of decisions below, and the conclusion dictated by sound principles of interpretation of the statutes involved, is that these claims for credits were allowed either on August 7, 1924, when the Commissioner signed his final schedules, or on July 14, 1924, when the Collector

made his application of the credits on the unpaid taxes and reported back to the Commissioner; and that the judgment of the court below should be affirmed.

Respectfully submitted,

BURTON E. EAMES
Attorney for Iron Cap Copper
Company, Respondent.

January, 1931.

SUPREME COURT OF THE UNITED STATES.

Nos. 42 and 43.—October Term, 1930.

United States of America, Petitioner, 42 *vs.* Boston Buick Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.
United States of America, Petitioner, 43 *vs.* Iron Cap Copper Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[February 2, 1931.]

Mr. Justice Roberts delivered the opinion of the Court.

These cases involve the same question as *United States* v. *Swift & Co.*, No. 56, decided this day; namely, what constitutes the allowance of a credit to a taxpayer who has overpaid his income or profits taxes. The issue is made on facts somewhat different from those involved in No. 56. It is whether interest to be paid on the amounts credited to the taxpayers shall be calculated as provided by § 1324 of the Revenue Act of 1921 (42 Stat. 316) or by § 1019 of the Revenue Act of 1924 (43 Stat. 346). Interest runs from different periods under these acts. As the allowance made by the Act of 1924 is more favorable to the taxpayers in these cases, they claimed interest on their credits under that act. The Commissioner awarded them interest under the Act of 1921. The date of the allowance of the credits becomes important because we have held that interest on refunds and credits must be computed according to the statutory provision in force at the time of their allowance. *United States* v. *Magnolia Petroleum Co.*, 276 U. S. 160; *Blair* v. *Birkenstock*, 271 U. S. 348.

Upon audit of respondents' returns for 1918 it was disclosed that their taxes had been overassessed for that year. In March, 1924, the Commissioner approved schedules which informed the Collector of the overassessments and instructed him to check the

same against the taxpayers' accounts, determine whether to abate in whole or in part, determine any overpayment, and apportion the same as between credit and refund. In July, 1924, the Collector completed his work, as to both taxpayers' accounts, and executed and forwarded to the Commissioner schedules of refunds and credits attached to the schedules of overassessments. The Commissioner placed his certificate of approval on the schedules of refunds and credits on July 31 and August 7. The Revenue Act of 1924 became effective June 2, 1924. If the credits were allowed after the effective date of that statute the respondents are entitled to interest computed in accordance with § 1019 of that act; if before, they are entitled to interest computed as provided by § 1324 of the Revenue Act of 1921. The District Court held that the provisions of the 1924 act applied, and the Circuit Court of Appeals affirmed its judgments. On petition of the United States this court issued writs of certiorari in both cases.

In view of the decision in No. 56 we hold that the Commissioner's approval of the schedule of refunds and credits constituted the allowance, and that interest is to be computed as required by the Act of 1924.

The judgments are affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.